



JUVENILE INJUSTICE:

Police abuse and detention of street children in Kenya

Human Rights Watch Children's Rights Project

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GLOSSARY OF TERMS AND ABBREVIATIONS

Afande Kiswahili term of respect for police.

ANNPCAN African Network for the Prevention and Protection against Child Abuse and Neglect.

Approved officer Individuals appointed by voluntary organizations who are approved" or "gazetted" by the minister of home affairs to work on issues related to the protection and care of children.

Approved school Correctional institution, under the administration of the Children's Department, to which children ten years old and above may be committed by courts.

Askari Kiswahili word for guard or soldier.

Beijing Rules U.N. Standard Minimum Rules for the Administration of Juvenile Justice.

Borstal institution Correctional institution, under the administration of the Prisons Department, to which children fifteen years old and above may be committed after being found guilty of criminal offenses.

CID Criminal Investigation Department of the police.

Children's officer Staff member of the Children's Department, authorized to refer cases of children "in need of protection or discipline" to court and to make recommendations to court on what correctional measure to order in a "protection or discipline" case.

ICCPR International Covenant on Civil and Political Rights.

Juvenile remand home Temporary detention center, under administration of the Children's Department, to which children are committed by court pending adjudication or final disposition of their cases.

KANU Kenya African National Union.

NGO Nongovernmental organization.

P&C Protection and care, used to refer to a subcategory of children who fall within the broader category of children "in need of protection or discipline."

P&D Protection and discipline, used to refer to a subcategory of children who fall within the broader category of children "in need of protection or discipline."

Probation officer Staff member of the Probation and After Care Services Department, authorized to make recommendation to court on correctional measures to order in a child's criminal case.

Remand prison Temporary detention center, under administration of Prisons Department, to which adults and children fourteen years old and above are committed by court pending adjudication or final disposition of their cases.

Reservist Police reserve officer, employed on a part-time basis to perform regular police duties.

Shamba Farm.

Sukuma wiki Green leafy vegetable.

U.N. Rules for the U.N. Rules for the Protection of Juveniles Deprived of

Protection of their Liberty.

Juveniles

Ugali Stiff porridge made of maize meal.

I. INTRODUCTION

Summary

Street children in Kenya face innumerable hardships and danger in their daily lives. In addition to the hazards of living on the street, these children face harassment and abuse from the police and within the juvenile justice system for no reason other than the fact that they are street children. Living outside the protection of responsible adults, street children are easy and silent targets for abuse by police and society at large. On the streets, they are subject to frequent beatings by police as well as monetary extortion and sexual abuse. They are subject to frequent arrest simply because they are homeless; "vagrancy"¹ (being without a fixed abode) is a criminal offense under Kenyan law. Once arrested, often by plainclothes police in roundup operations, street children are processed through the revolving doors of the Kenyan juvenile justice system, where children pass back and forth between remand detention centers and court before a final disposition is reached in their cases. After spending indefinite periods of time on remand, where they are further neglected and abused, they may be finally sentenced to institutions called approved schools, borstal institutions or adult prisons, which do little to improve their lives. Further, the procedures by which street children are deprived of their liberty and are committed to these institutions do not comply with the due process standards of international law. This report documents the treatment of street children by the Kenyan police, and in the juvenile justice system as a whole, following street children from an all too frequent route from street to police station lockup, from lockup to court, from court to detention in remand institutions, and finally from remand to confinement in correctional institutions.

For the purpose of this report, Human Rights Watch undertook a fact-finding mission to Kenya, in September and October of 1996. We interviewed over sixty children in Nairobi, Kisumu and Mombasa. Most interviews with children were conducted with the assistance of interpreters on the streets, or in shelters for street children and, in certain cases, in correctional or remand institutions where children were confined. Additionally we interviewed members of nongovernmental organizations (NGOs) and human rights activists that work with street children in Kenya. A number of the NGO representatives we spoke with requested anonymity for themselves and their organizations, particularly when speaking on issues of police abuse of street children, reflecting the sensitive nature of the issues involved and the fear that nongovernmental actors have of the government and police. We also met with government officials, including representatives and staff of the Children's Department, the Probation and After-Care Services Department, the police and the judiciary. Additionally, we visited three juvenile remand homes and three approved schools, and interviewed staff there. We also observed proceedings at the Juvenile Law Court in Nairobi.

Upwards of 40,000 street children live in Kenya today, with over half of their population concentrated in the capital, Nairobi. Numerous and complex socio-economic factors have fueled the rising presence of children on the streets, including, but not limited to: rapid urbanization and the breakdown of traditional support structures of the African extended family; the increasingly difficult circumstances of women as heads of single-parent households; the inability of parents to pay uniform and book fees, and other costs of public education; the displacement of large numbers of people in urban slum clearance operations, sometimes leaving families homeless overnight; and, in recent years, the

internal displacement of an estimated 300,000 people, including a high percentage of children, from state-sponsored "ethnic" violence in the west and Rift Valley of Kenya.

Some street children we spoke with had parents or family members in nearby slum areas or in faraway villages, with whom they maintained some contact. Some were not actually "homeless" but spent periods of varying length on the street before returning to their homes, and then returned back to the streets. Most said they came from single-parent households or that they had lived with a relative other than a parent before leaving home. Some were abandoned or orphaned; others left their families and homes of their own accord citing the inability of their families to provide and care for them, or problems in their relationships with their parents, as the cause. Thus when we use the term "street children" we refer to the broad spectrum of children "for whom the street more than their family has become their real home."²

Arrest and Confinement of Children in Correctional Institutions

With their numbers on the rise, police and local government authorities are increasingly at a loss as to what to do with street children. Despite the emergence, on the surface, of coalitions of NGOs working on issues related to street children, including the establishment of the National Task Force on Street Children (to advise the government at the cabinet level on issues related to street children), and a stated commitment of the attorney general to addressing the needs of street children, the reality is that street children continue to be criminalized in Kenya simply because they are homeless. Government response to the rising presence of street children is to arrest and charge street children with the crime of "vagrancy."

Law enforcement officials who police the streets and carry out arrests of street children demonstrate brutal attitudes towards street children and abuse and exploit the children with impunity. Children reported that on the street they are often harassed and beaten by police, and have to pay bribes to police in order to avoid arrest. Street girls reported being sexually propositioned by police in order to avoid arrest or to be released from custody, including raped.

Often regarded by police as petty criminals, or vagrants at best, street children are often rounded up, for no reason other than the fact that they are on the streets. Although police and government officials may state that street children are rounded up for the alleged purposes of identifying and reuniting children with their families or placing them in appropriate institutions for their care, the manner in which the children are subsequently treated, both by police and within institutions, belies such intentions; these children are arrested and dealt with as criminals.

Police roundups are conducted with brute force and with little regard for the welfare of the children, who are often taunted, scolded, manhandled and beaten at the time of arrest. Twenty-five out of forty-five children whom we interviewed and who were arrested, said they had been beaten by police at the time of arrest and/or at the police station. Seven out of the forty-five said they had not been beaten. Once arrested, street children are held under deplorable physical conditions in crowded police station cells, often without toilets or bedding, with little food, and inadequate supplies of water. They are almost always mixed with adults, beaten and harassed by police in the station, and held for periods extending from several days to weeks without any review of the legality of their detention by judicial authorities. One child reported being held in a police lockup for two months without being charged with an offense and without any review of the legality of the detention before he was finally released by police, despite Kenyan legal requirements that a person arrested without a warrant be brought before a magistrate without delay, and ordinarily within twenty-four hours.

Once arrested, children may have their cases referred by police to court for processing. Children's cases are supposed to be heard in special juvenile courts, established under the Children and Young Persons Act.³ The jurisdiction of juvenile courts extends to both criminal matters and to non-criminal "protection or discipline" matters-essentially status

offenses. Status offenses are acts that would not be offenses if committed by an adult; for example, truancy, running away from home, or being "incorrigible." Under Article 21 of the Children and Young Persons Act, children who are "in need of protection or discipline" are children under the age of sixteen who are deserted, parentless, beggars, vagrants, "uncontrollable," or who fall into "bad associations." "Protection or discipline" cases and criminal cases are treated very similarly, and the categorizations are thus in many ways arbitrary and meaningless. For example, a fifteen-year-old street boy who is arrested by police on "vagrancy" grounds could be treated as either a criminal case or a "protection or discipline" case, depending on the discretion of the magistrate; either way, the boy could be finally committed by court to an approved school.

Despite the requirement that children's cases be heard in special juvenile courts, we found that children's cases are often heard in regular courts along with adult cases, where children are tried without the special protections accorded to juveniles under Kenyan law. However, even when their cases are heard in juvenile court, the proceedings are rushed and do not allow children fair opportunities to be heard. To our knowledge, none of the children we interviewed were ever represented by legal or other counsel in either juvenile or regular courts, and only a few said that a parent or guardian was present at the proceedings. Confused and frightened in court, children often do not understand the nature of the legal proceedings or the dispositions of their cases. Some said they were advised by cell mates, and in one case even by the magistrate, to plead guilty to crimes, including the crime of vagrancy, in order to avoid otherwise lengthy periods of detention in remand institutions.

Pending final adjudication and disposition of their cases, street children are committed by courts to temporary detention in remand institutions- to juvenile remand homes (for children fifteen years old and younger) or to adult remand prisons (for children at least fourteen years old) where they may languish for indefinite periods of time, usually between several weeks and several months, before a final disposition is reached on their cases. There are no limits under Kenyan law on the amount of time that a person can be detained in a remand institution. Although remand homes are meant to be only temporary holding centers for children, we found that some children had spent several years in remand homes pending adjudication of their cases-without any education or recreational activities at all to provide them with stimulation.

Conditions in remand were particularly disturbing in adult remand prisons, where children as young as fourteen may be held. Rooms were so crowded that children reported sleeping sitting up or next to toilets because there was not enough room elsewhere. Boys said they endured extreme physical abuse, usually by older inmates and sometimes by prison guards. Sexual harassment by inmates was also reported, along with failure of guards to protect children from inmate abuse. As mentioned above, the notoriety of remand centers, with regard to both the conditions within and the limitless duration of remand periods, leads some children to plead guilty to offenses they have not committed in order to avoid remand altogether.

From remand, children may be finally committed by courts to approved schools (if the child is fifteen years old or younger), borstal institutions (for boys at least fifteen years old) and adult prisons (if the child is at least fourteen years old). A wide range of alternatives to custodial treatment are provided for under the Children and Young Persons Act, yet magistrates still tend to overuse institutionalization as a remedial measure for street children. Conditions in these institutions fail to provide children with the education and rehabilitative training that they purport to, and children leave these institutions emotionally and physically scarred, stigmatized, and negatively influenced by their peers who may be serious criminal offenders. Little effort is made to separate the children by category of their underlying offense or status, resulting in children who are homeless being mixed with children convicted of serious criminal offenses. Further, many children complained about the infliction of corporal punishment by staff, and physical abuse by other boys. In approved schools, canings, deprivation of home leave, and labor are used as punishments. Punishments in borstal institutions (for boys) were found to be particularly cruel-boys reported the use of hard labor (digging), solitary confinement in dark and wet isolation rooms, reductions in diet, and public floggings.

The treatment of street children by police, the procedures by which children are confined to correctional institutions, and the conditions in these institutions will be discussed in this report. The Kenyan government is failing to adequately address the social and economic hardships which lead children to the streets. Moreover, its system of correctional institutions fails to provide children with the rehabilitation, support, and education required to assist them to become responsible and capable members of society. The complex and outdated legal provisions and enforcement mechanisms which currently exist in Kenya result in the criminalization and mistreatment of street children. Although the Kenyan government is currently in the process of considering much needed amendment of a number of laws relevant to street children, including the Children and Young Persons Act, it is feared that little real change will come about. Human Rights Watch hopes that this report may be useful in identifying some of the specific areas in need of reform, in the interest of improving the lives of street children in Kenya.

Recommendations

Human Rights Watch makes the following recommendations concerning the treatment of street children by police and in the juvenile justice system:

To the Kenyan Government:

- | The government should promptly submit its overdue report on Kenya's compliance with the U.N. Convention on the Rights of the Child to the Committee on the Rights of the Child.

- | The government should promptly sign and ratify the African Charter on the Rights and Welfare of the Child.

To the Attorney General:

- | As a matter of priority, the attorney general should complete the redrafting of the Children Bill and other relevant laws requiring reform, in close consultation and cooperation with the Kenyan NGO community. We urge the attorney general to take into account the recommendations below in redrafting the Children Bill and other laws.

- | The attorney general should seek the technical assistance of the U.N. Crime Prevention and Criminal Justice Division towards the reform of laws relating to juvenile justice.

- | The Births and Death Registration Act (Chapter 149 of the Laws of Kenya) should be amended to ensure that all births in Kenya are duly recorded and registered so that children and their families know their age.

- | The Police Act (Chapter 85 of the Laws of Kenya) should be amended to include clear guidelines on the use of force by police. The Police Act currently contains guidelines on the use of firearms only.

- | The Vagrancy Act (Chapter 58 of the Laws of Kenya) should be repealed or amended so that "having no fixed abode," "begging," or having neither "lawful employment nor lawful means of subsistence" are no longer criminal offenses for street children and not grounds for arrest.

- | The Children and Young Persons Act should be amended accordingly:

Article 6, which allows police to detain sixteen and seventeen-year-old children with adults, should be amended so that children-those under eighteen-are never detained with adults.

Article 11 should be amended to place a time limit on the period that children can be detained on remand pending adjudication of their cases, and to prohibit remanding children to adult remand prisons.

Article 12 should be amended so that children who are accused jointly with adults of criminal offenses are tried in juvenile courts.

Article 17 should be amended so that corporal punishment is never used as a correctional measure.

Article 17 should be amended so that children are never committed to adult prisons.

Article 46 should be amended to prohibit the transfer of children from an approved school to a borstal institution or prison, and to prohibit the prolonging of a child's sentence in an approved school.

| The Borstal Institutions Act (Chapter 93 of the Laws of Kenya) should be amended to:

Eliminate the following disciplinary practices in borstal institutions:

corporal punishment (Article 33.5);

solitary confinement (Articles 32, 33.5); and

reduction in diet (Articles 32, 33.5).

Prohibit the transfer of children from a borstal to prison (Article 42).

| The right of children to maintain contacts with the outside world through uncensored correspondence and visitations should be respected. The Borstal Institutions Rules (subsidiary legislation under Article 52 of the Borstal Institutions Act) should be amended to eliminate the censorship of children's correspondence (Rule 45) and to eliminate the use of deprivation of the right to write and receive correspondence as punishment (Rule 42).

Regarding the Police:

| The Kenyan government should reiterate the absolute prohibition on physical abuse of children by police, and should prosecute any police officer found guilty of such abuse to the full extent of the law.

| Prompt investigations of complaints concerning police mistreatment of children should be conducted, their findings made public, and disciplinary measures and criminal proceedings ordered where appropriate.

| The attorney general should establish a special independent commission for the receipt of complaints concerning police mistreatment of street children (having special cognizance of the use of deadly force, custodial abuse, sexual abuse, and extortion). The commission should be directly accessible to street children and should be equipped and empowered to subpoena witnesses, conduct investigations, and to bring complaints to the Attorney General's Office and the Criminal Investigation Department.

| Police should be specially educated and trained on how to handle cases of street children with a view towards sensitizing police to the special needs of children and ensuring that rights accorded to children, under international and Kenyan law, are enforced.

| Measures should be taken to ensure that children are not detained beyond the permissible periods under law; the validity of any detention extending beyond twenty-four hours should be promptly reviewed by judicial authorities or the child should be released.

| Police should make diligent and systematic efforts to determine the age of young persons they arrest, to ensure that children are identified and dealt with as children. If necessary to refer children's cases to court, cases should be referred to juvenile court.

Regarding the Juvenile Courts:

| Resources should be directed towards the establishment of specialized juvenile courts in Kenya for the handling of children's cases. Currently, only one specialized juvenile court exists in all of Kenya, in Nairobi.

| Magistrates should make diligent and systematic efforts to determine the age of young persons appearing before them to ensure that children are identified and treated as children, in juvenile courts according to law.

| Magistrates who handle juvenile cases should be specially educated and trained on how to handle children's cases, with a view towards sensitizing the judiciary to the special needs of children and ensuring that the rights accorded to children, under both international and Kenyan law, are enforced.

| The government should take steps to provide children in court with free legal and other assistance in their cases. Magistrates should make special efforts to ensure that children understand the nature of the proceedings and the status and disposition of their cases. Parents or family members should take part in the proceedings.

| The Ministry of Home Affairs should ease restrictions on the procedures for becoming an approved officer (an officer approved by the government to work on issues related to the protection and care of children, including appearing on behalf of children in juvenile court). NGO representatives who work with street children should be allowed to act as approved officers and to provide assistance to street children in juvenile court.

| Magistrates should always consider social inquiry reports by children's officers or probation officers before ordering the deprivation of a child's liberty.

| Alternatives to institutionalization should be given the highest priority in determining correctional measures.

| All efforts should be made to reunite children with their families, or to place them in appropriate children's homes, approved voluntary institutions, and NGO-run programs for street children.

| The deprivation of liberty in a correctional institution (approved school, borstal institution, or prison) should only be ordered as a last resort and for the shortest period necessary.

| Children who are "in need of protection or discipline" should not be committed to the same institutions as children who are convicted of criminal offenses.

| Court practice should be changed, so that cases of children who are "in need of protection or discipline" are not treated as criminal cases.

Regarding Remand Institutions, Approved Schools, and Borstal Institutions:

| The Children's Department should undertake measures to ensure that children are separated according to the nature of their underlying offenses or status, and separated in detention or correctional facilities accordingly.

| Every juvenile confined in a detention or correctional facility should have immediate access to adequate medical care and medical facilities for the prevention and treatment of illness. Every juvenile in custodial care who is ill, who complains of illness or who demonstrates symptoms of illness, physical or mental, should be examined promptly by a qualified medical officer and treated.

| Corporal punishment and physical abuse by staff against children should be strictly prohibited. Staff found to have abused children should be appropriately disciplined, including by dismissal. Where appropriate, criminal charges should be brought against the staff.

| The practice of suspending home leave to children confined in approved schools, as punishment, should be ended.

| The use of corporal punishment in approved schools (as authorized in the Internal Regulations of the Children's Department) should be discontinued.

| The Children's Department and the Prisons Department should ensure that children are provided with effective mechanisms to make uncensored complaints about the conduct of institutional staff members or the conditions of confinement.

Regarding Education:

| The government should undertake measures to provide free primary level education to street children in Kenya, and to provide for the associated costs of education (books, uniforms, and "building fund" contributions or "school fees") for such children.

| The government should establish a special fund for the provision of the associated costs of primary level education to children from low-income families throughout Kenya, for whom the payment of book, uniforms, and "school fees" are prohibitive. Women, as heads of single parent households, and others who care for children and are unable to afford the associated costs of primary education should be encouraged to apply for support to enable children to stay in school.

| The Prisons Department should ensure that borstal institutions provide primary level education for all boys, not just for boys in standards 7 and 8.

| The Children's Department should ensure that girls committed to approved schools are provided with equal access to opportunities for secondary level education. Currently only boys have the opportunity of continuing their education beyond the primary level in approved schools.

To the United Nations:

| The U.N. Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment should visit Kenya and investigate police abuse of street children, and abuse of children in borstal institutions and adult remand prisons.

| The U.N. Working Group on Arbitrary Detention should visit Kenya and investigate the detention of children in police station lockups, juvenile remand homes and adult remand prisons.

| The U.N. Committee on the Rights of the Child should devote one of its theme days to police violence against street children.

To Donor Country Governments:

| Aid should be earmarked for the training of police and law enforcement personnel on the rights of the child and on the handling of juvenile cases.

| Aid should be earmarked for the creation of specialized courts for children (juvenile courts or family courts), and for the training of magistrates on the rights of the child and on the handling of juvenile cases.

| Aid should be earmarked to facilitate the reunification of street children with their families.

| Realizing that deprivation of liberty should be ordered only as a last resort for children, aid should be earmarked to improve conditions in remand institutions, approved schools, and borstal institutions to provide for the health, physical, educational and recreational needs of children committed there.

| Aid should be earmarked for the purposes of defraying the associated costs of primary school attendance, such as book fees, uniforms, and building maintenance costs, which families currently must provide.

| Donor country governments should use their influence with the Kenyan government to seek accountability of law enforcement personnel, prison officers, and correctional school officers for abuses committed against street children, including extortion, physical abuse and sexual abuse.

| Donor country governments should use their influence to press the attorney general for meaningful reform of existing legislation affecting children, to bring legislation into compliance with the Convention on the Rights of the Child-in the drafting of the revised Children Bill and other legislation.

To NGOs:

| NGOs should maintain detailed records of incidents of violence between police and children in order to monitor and document abuses by police. They should submit these records to the government-created Standing Committee on Human Rights, and coordinate with other NGOs active in the protection of human rights to strengthen NGO efforts in this area.

II. BACKGROUND

*I was schooled up to standard 3. I was chased away from the school because I couldn't pay the school fees, and I didn't have a uniform. Then I was home for a while, with my mother and brothers and sisters, and I started hanging out on the streets. That's how I came to be a street boy.*⁴

The Growing Presence of Street Children

Before discussing the treatment of street children within the juvenile justice system, it is important to address the complex factors that contribute to the "phenomenon" of street children in Kenya. In addition to deep rooted and complex socio-economic factors, direct government actions have also contributed to the mounting presence of street children in Kenya.

Between 1980 and 1990 the urban population in Kenya doubled, with most of the growth concentrated in Nairobi, the capital, and Mombasa, the second largest city.⁵ Migration from rural areas to urban centers increased dramatically with poor families being driven from their homes by landlessness, drought and unemployment. A sprawling collection of slum settlements spread over the outskirts of Nairobi, including the areas of Mathare Valley, Huruma, Dandore, Kariobangi, Kibera, Korogocho and Ngara. With thousands of new urban slum dwellers, including a large number of single-parent households headed by women,⁶ the numbers of children⁷ living on the streets began to rise dramatically. The annual growth rate of the street children population was put at 10 percent in 1993.⁸ There are currently estimated to be 25,000 street children in Nairobi alone and upwards of 40,000 nationwide,⁹ compared to an estimated 3,600 in Nairobi and 16,300 nationwide in 1989.¹⁰ A study on street children initiated by the Attorney General's Office in 1989, and completed in 1991, concluded that Kenya was sitting on a "time bomb."¹¹

Numerous and complex socio-economic factors have fueled the rising presence of children on the streets. Views expressed in a 1993 UNICEF International Child Development Center report point towards the increasingly difficult circumstances of women, as heads of single-parent households, as a major contributing factor. Like in many places in the world, Kenyan women have had comparatively less access to education and paid employment opportunities than men and are less represented in higher-paying occupations. Yet, overwhelmingly, it is the women who take responsibility for raising their children in single-parent households. The single-parent phenomenon "is the result of a combination of social and economic factors, including the increasing employment of women outside the home, connected to the impact of rapid urbanization and the unfamiliarcity lifestyle on family ties and conjugal life."¹² Industrialization and urbanization have contributed to the breakdown of the traditional African extended family network which previously provided a safety net of support. Industrialization and urbanization have also contributed to a rise in cohabitation before or instead of marriage, leading to complications regarding the custody and support of children and the inheritance of property when the relationship ends. The Affiliation Act guaranteed that children born out of wedlock were entitled to financial support by the father until 1969, when it was repealed in parliament, with male parliamentarians arguing that the Act was being abused by women to claim support from more than one man for one child. Formal marriages are also becoming less stable, with divorce and separation rates on the rise. With the pressures of urban life and the breakdown of traditional support structures of the African extended family, women and their children are finding themselves increasingly at risk.¹³

The rising costs of education, coupled with these socio-economic factors, have further contributed to the increase of children on the streets. Kenya follows the "8-4-4" system: there are eight years of primary level education, standards 1-8, followed by forms 1-4 of secondary level education, followed by four years of university level education. When the Kenyan government ratified the International Covenant on Economic, Social and Cultural Rights in 1976, it recognized "the right of everyone to education," and that with a view towards achieving progressively the full realization of this right, "primary education shall be compulsory and free to all."¹⁴ The Convention on the Rights of the Child, ratified by Kenya in 1990, provides for the same.¹⁵ Although not yet compulsory, primary level education (standards 1-8) in Kenya is tuition-free.¹⁶ As early as 1961 the Kenya AfricanNational Union (KANU), which has been in charge of government since 1963, committed itself to providing free primary level education for every child.¹⁷ However, in practice not all children have been able to benefit from the plan for free primary education. Dropout rates are high, even at the primary school level, in large part because of the heavy expenses incurred by families to finance their children's primary education. Between 40 and 60 percent of children living in the slum areas of Nairobi, Kisumu and Mombasa do not attend primary school, compared to enrollment rates of about 80 percent in the urban population as a whole.¹⁸ The reality is that education in Kenya, even at the primary level, is not free.

While there are no tuition fees for primary education, parents must provide for the costs of textbooks, uniforms, stationery, and building and maintaining schools, by making "voluntary" contributions to the "development fund" or "building fund." The government pays for teachers' salaries and some school equipment and some textbooks.¹⁹ This cost-sharing arrangement between the government and parents is simply beyond the means of many families from

which street children come. Indeed, many street children who we interviewed said they had taken to the streets after being thrown out of school for not being able to pay school fees or because they did not have uniforms or shoes.²⁰

Large scale slum clearance operations undertaken by city authorities have been another factor contributing to the rise of street children. With policies ostensibly aimed at maintaining Kenyan cities at the highest standards of hygiene, the government uses urban planning restrictions, which forbid the development of squatter settlements, to remove residents with the eviction and destruction of their homes-leaving already marginalized slum dwellers and their families homeless. These operations are often undertaken without providing assistance, alternative arrangements, or notice to evicted residents, with families sometimes literally being uprooted from their homes and left to fend for themselves on the streets.

Finally, in recent years, state-sponsored ethnic violence in the west and Rift Valley of Kenya has also contributed to the internal displacement and migration of families, as well as the breakup of families.²¹ In 1991, after the government was forced to concede to a multiparty system, the Moi government was responsible for instigating "ethnic" violence in order to punish those ethnic groups which supported the political opposition and to reward its own supporters with illegally obtained land. Although the large-scale attacks that characterized the violence have diminished since 1994, periodic incidents continue. Most of those displaced belong to the Kikuyu, Luo and Luhya ethnic groups and were attacked by members of the Kalenjin ethnic group (President Moi's group) as well as the Maasai. Retaliatory attacks did occur, but tended to be more random and opportunistic in character, and most of the displaced Kalenjin have since returned to their land. However, thousands others of the estimated 300,000 displaced have still not returned to their land because of government inaction to provide adequate security. The government has also been responsible for forcibly dispersing groups of displaced in order to avoid the attention of humanitarian and human rights groups and to evade its responsibility to return these people to their land and livelihood. Since most of those displaced by the "ethnic" violence were subsistence farmers with little formal education, they have been rendered virtually destitute. Many members of the internally displaced Kikuyu, Luo and Luhya ethnic groups have drifted to the urban slum areas.

The United Nations has estimated that as much as 75 percent of the estimated 300,000 displaced were children.²² A number of Kikuyu boys and girls whom we interviewed in Nairobi and in Mombasa said they were forced to flee from their homes and were separated from their families during "tribal clashes," as the violence is known, in the west and Rift Valley of Kenya in 1992 and 93. They had come to Nairobi in search of family members or simply because there was nowhere else for them to go:

I had to flee in the middle of the night. I woke up and our house was on fire. There was no one left in the house, and I just ran. I stayed in a camp for about a year with a lot of other people who had to flee like me. After a while, people started talking about going back to their homes. I went back to my home [in Molo, in the Rift Valley], but our home was not there and my family was gone. The neighbors said they had heard nothing about my parents. So I came to Nairobi to look for my uncle and found him. He was surprised to see me-he said he thought we had all been killed. But he couldn't keep me with him. Sometimes I still see him when I can, but he can't take care of me.²³

Another Kikuyu boy said, "we're not real street boys, we were forced to leave our homes during the clashes. I had to run out of the house and hide at night-our house was burning. I came back the next day and my parents and brothers and sisters were gone. I don't know where they went. I came to Nairobi, and haven't been back [to Molo] since."²⁴

Whatever the causes are, the numbers of children living on the street are expected to continue to rise. In addition to addressing the deep rooted and complex factors which contribute to their existence on the streets, the Kenyan government must take steps to address the treatment of street children by law enforcement and within the juvenile justice system, and by Kenyan society as a whole.

III. POLICE ABUSES AGAINST STREET CHILDREN

*We usually carry sacks (for garbage picking). The [Kisumu] police beat us up and put us in our sacks. Even if we're just walking around, doing nothing. If you don't give them money, they take you to the station. Usually they ask us questions about thefts that have happened. They search us. If we have money, they take it. If we don't have money, we have to talk to them really nicely, or else they'll take you to the police station.*²⁵

Life on the streets is dangerous enough for street children without their having to be on guard against police, the very people who are supposed to protect them. While we recognize that some police work to help street children and to reunite them with their families, many others do just the opposite, harassing and abusing the children and those who seek to help them. One street worker in Nairobi described being questioned by police: "they wanted to know who I am, and what business I have with the kids. I told them I am their friend and teacher. The police told me that I am doing zero work as those boys are criminals. . . . I convinced them that these boys can be rehabilitated if we use the right approach. They said it is not possible."²⁶

Police tend to view street children as hardened criminals, who must be treated with severity. Police also abuse and exploit the children for their own personal gain. Children we interviewed said they were frequently harassed, beaten, and had their money taken from them by police on the streets. Girls in Nairobi reported being sexually propositioned or coerced into having sex with police. The level of abuse is rising to a dangerous level. In recent years, there have been alarming incidents of police use of lethal force against street children resulting in death. The Executive Director of the Undugu Society of Kenya has been cited as stating that "Kenya's dispossessed youngsters don't face the same level of public hostility as their counterparts in South America, but violence against the street kidshas been increasing."²⁷ With their ranks growing, street children are likely to continue to suffer from such abuses unless immediate measures are taken to ensure better training and strict accountability of law enforcement personnel.

International and Kenyan Standards

The conduct of police regarding the use of force is prescribed under international law by the U.N. Code of Conduct for Law Enforcement Officials.²⁸ Law enforcement officials "shall respect and protect human dignity and maintain and uphold the human rights of all persons" in the performance of their duties (Article 2). The human rights that must be "protected, maintained and upheld" are those identified and protected by national and international law, including the International Covenant on Civil and Political Rights (ICCPR) which was ratified by Kenya in 1976.²⁹ Under Article 7 of the ICCPR, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³⁰ Under the Code of Conduct, no law enforcement official may inflict, instigate or tolerate such treatment or punishment against any person (Article 5).

Force may only be used as is reasonably necessary to prevent the commission of a crime or to effect a lawful arrest; no force may be used beyondthat which is reasonably necessary to effect that purpose.³¹ The Kenyan Police Act contains no guidelines on the use of force, aside from the use of firearms, by police. However, police regulations contained in the Police Act recognize an officer's unlawful use of violence or the unlawful striking of a person as a disciplinary offense.³² We strongly recommend that the Police Act be amended to include clear guidelines on the limits of use of general force that comply with the Code of Conduct and with the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

With regard to the use of firearms, Article 28 of the Kenyan Police Act authorizes its use against "any person who by force attempts to prevent the lawful arrest of himself or of any other person." The officer must also have "reasonable ground to believe that he or any other person is in danger of grievous bodily harm or that he cannot otherwise . . . effect the arrest." Similarly, international standards provide that use of firearms should be avoided, especially against

children, except when a suspected offender offers armed resistance or jeopardizes the lives of others, and less extreme measures cannot restrain him.³³ In cases where the lawful use of force and firearms is unavoidable, law enforcement officials must act with restraint in such use of force and in proportion to the seriousness of the offence and the legitimate objective to be achieved, with a view towards minimizing injury and preserving human life.³⁴

Police Abuse of Children on the Streets

Categories of Law Enforcement Personnel

Street children in Kenya come into frequent contact with several different categories of law enforcement personnel: regular police, police reservists, administration police, and city *askaris* (the Kiswahili word for guard or soldier). In addition to regular police, the Kenyan Police Act provides for the establishment of the Kenyan Police Reserve, staffed by reserve officers (known as reservists) who are employed on a part-time basis to perform regular police duties.³⁵ As with regular police, reservists may be in uniform or plain clothes and may be armed.³⁶ As with regular police, they may be disciplined or prosecuted for their conduct under the Police Act or under any other law.³⁷ There are also armed and uniformed administration police appointed by the provincial administration who have duties and powers identical to those of ordinary police in conducting arrests.³⁸ Administration police are frequently associated with land and housing eviction operations, and are most active in rural areas. Several children we interviewed stated that administration police sometimes work together with regular police and reservists to round up street children. Finally, there are also unarmed and plainclothes city police, known as city *askaris*, who enforce city by-laws and are under the administration of a city commission (city council). City *askaris* sometimes work with administration police in slum clearance operations, and carry out arrests of street hawkers and vendors, including street children.³⁹

It should be noted that children usually were unable to identify the particular law enforcement agency of the officers they spoke about, but simply referred to them as police or *askari*. As many are often in plain clothes, and none wear visible identification badges or name tags, children were generally unable to identify police by name. In the testimonies which follow, we have used the language of the children to identify law enforcement personnel. When children did use particularized terms or names for police, we have stated so.

Physical Abuse on the Streets

Street children interviewed by Human Rights Watch recounted numerous incidents of physical abuse and harassment by police on the street. "We usually run away when we see the police because we know what will follow," said fourteen-year-old John about life on the streets in Nairobi.⁴⁰ Another Nairobi street boy told us that police harassment is constant, and that he had been beaten by police many times, the most recent time being just one day earlier in Westlands, Nairobi: "I was slapped around yesterday morning. The police just pounced on me while I was walking and started hitting me."⁴¹ Children said they are frequently kicked, slapped, or hit with rifle butts for no reason other than the fact that they are street children. This type of treatment is not restricted to police in the Nairobi area, but was also reported in Kisumu.

In Mombasa children reported better treatment on the streets by police. Sixteen-year-old Peter, who had formerly lived on the streets in Nairobi, commented that "the police in Mombasa are better than in Nairobi. In Nairobi, even if you're just walking around doing nothing, the police might come and just pick you from the street and beat you up, and take you to the station. At least they don't do that here in Mombasa."⁴² Another Mombasa street boy offered further explanation, "the police might not beat you, they just treat you like you're a sack, like you're not a person—they didn't beat me, but they threw me around and into the police vehicle like I was a sack."⁴³

NGO street workers and many children told us that physical abuse by police is worse at night, when fewer people are

on the streets and the risk of public censure is likely to be less. Roundups of street children usually happen at night, during the course of which children are often manhandled and beaten. Once detained, children are often further beaten at police stations, during interrogations and in lockups. This will be discussed in greater detail in Section IV (on confinement of children in police station lockups).

Extortion

Aside from physical abuse, street children are also subject to extortion by police on the streets. They often must give up whatever meager amounts they have on their bodies to avoid arrest. In all three cities visited, children described having to pay money to police in order to avoid being taken into custody. "The policeman will say, 'now won't you give me some money for my tea,⁴⁴ and then I'll let you go'," said Helen, from the Mathare slum of Nairobi. Two weeks earlier, she had to give 500 shillings (approximately U.S.\$10) to a policeman from Central Police Station in Nairobi in order to avoid arrest.⁴⁵ Fourteen-year-old Judy told us how she had been caught with several other girls near the 680 Hotel in Nairobi by plain-clothes police, who asked her if she had any money. When she said she had no money, she was slapped and taken to Central Police Station, and then to court where she was charged with vagrancy.⁴⁶

A social worker who works with street boys in Mombasa told us it is well known that police can be paid off to avoid arrest, but that street children rarely have the cash to do so;⁴⁷ fifteen-year-old Victoria told us, "I've never bribed the police. That's why I've been to jail ten times."⁴⁸

Another street worker who works with children in Nairobi noted that "blackmailing" also occurs "when drugs are around" or "when the boys play *karata* (a gambling game)." He added that children who are arrested and brought to police stations are released immediately if they are able to pay money. "When they do not have money they sometimes stay two to three days in the police station and are subsequently released," he said.⁴⁹

Sexual Abuse of Street Girls

Even more disturbing were the accounts of the sexual abuse of girls on Nairobi streets. In addition to money, street girls told us that they are asked for sex to avoid arrest or to be released from police custody. "When the police catch you, they ask you for money, or for sex, or else they'll take you to the police station," said Helen, who sleeps near City Market at night.⁵⁰ Five out of nine girls we interviewed on the streets of Nairobi, said that police had detained them and offered to release them in exchange for sex. The girls had been arrested on grounds of "loitering with intent to solicit" or vagrancy.

Sixteen-year-old Elizabeth, pregnant with her second child, described being arrested and locked in a cell in Central Police Station in Nairobi. She said that while her cell mates were asleep at night, two police men approached her and told her they would release her if she agreed to have sex with them. She said she refused, for which they punished her the next day by whipping her with a strip from an old rubber tire and ordering her to wash out the toilets. Elizabeth was eventually sentenced in City Court to two weeks in Langata Prison (for women) for "loitering with intent to solicit." Soon after her release from prison, she told us she was caught by police again, near Uhuru Park at night, and was put in a car where she was asked to have sex with one of the officers. "They didn't threaten me, but I was afraid, so I agreed to do it. I only had to have sex with that one policeman," she said.⁵¹

Eighteen-year-old Pamela, from Nyeri district in Central Province, recounted how she had been raped by a police man a year earlier:

The police are always calling us names, threatening us, saying we're whores, trash, homeless, and beating us. Sexual abuse happens too. It happened to me once, here in Jeevanji [Gardens, a public park]. Four policemen came and

arrested me near City Market. They started taking me to the Central Police Station, and brought me here to the park. One of them hit me and I fell down, and he came down on top of me. Another held me down while the policeman raped me. After he raped me, they walked me over to Central Police Station, and just let me go."[52](#)

Pamela said she still sees the policeman who raped her patrolling the streets. She never complained to anyone about the rape. "Who would I complain to? If you go to the police to say anything, they'll either make you leave or they'll lock you up," she said.

Use of Deadly Force

Given the brutal attitude that many police display toward street children, it is not surprising to find that police violence against street children has occasionally risen to a deadly level in recent years. On August 11, 1994, a fifteen-year-old street boy named Simon Kamande Kampaniu was allegedly shot several times at close range and killed by police reservist Arvinderjit Singh Chadha in the Ngara area of Nairobi.[53](#) Public outrage mounted when it became known that the same reservist had been involved in the shooting and killing of five other street boys less than two months earlier on June 22, 1994. The reservist was eventually charged with the murder of Simon Kamande Kampaniu but was acquitted after trial in March 1995.

Presiding over the High Court in Nairobi, where the reservist was tried, Judge Samuel Bosire found that there was insufficient evidence to prove that the reservist had committed murder, or even the lesser charge of manslaughter.[54](#) The reservist admitted shooting Kampaniu and said that the boy was the eighth person he had killed in two years of duty.[55](#) He claimed that he had acted in self-defense after Kampaniu allegedly threatened him with a knife. The judge found that there was insufficient evidence to support the reservist's claims that Kampaniu had been armed, but still ruled that Kampaniu "was killed in the course of arrest after having committed a crime."[56](#)

Street children interviewed immediately after the verdict stated that the decision set a dangerous precedent for them and that it encouraged police to use excessive force against street children. Sixteen-year-old Evans Nyagah said the ruling signaled to police that they could shoot street children at any time and claim that children were stealing as justification for their conduct.[57](#)

Eighteen months after the acquittal, another street boy named Daudi Ismail, known as Kajunia, was allegedly shot and killed by a reservist in Uhuru Park in Nairobi on September 22, 1996. The shooting occurred during Human Rights Watch's visit to Kenya, and we were able to interview several of the boys who were present at the shooting. Eighteen-year-old Moses described to us what happened that Sunday afternoon in Uhuru Park:

It was around 3 p.m. We were by the restaurant in Uhuru Park. They had given us food in exchange for throwing out their garbage and we had just sat down to eat. There was a big group of us boys. Kajunia and David went off to go to the bathroom. Some other boys went off to get water for us all to drink. Then we saw Paul, a police reservist, who we recognized right away—he usually carries a whip. He and his partner got out of their car, about fifty meters away, and started coming towards us. Paul was holding a whip in his left hand. We got up and started to run away. We were all running and shouting, and some of the smaller boys were caught and whipped. I jumped over a fence and crouched down low, near the Cathedral. David and Kajunia had gone down into a ditch which runs through a part of the park, and gone to the bathroom in a tunnel. David came out first and was able to get away in time. Kajunia was just coming out when Paul got him. Paul had his gun out and pointed into the ditch and fired. A few minutes later, he walked to his car and drove away. A crowd gathered around Kajunia's body, and the police came about fifteen minutes later. Us boys stood back a little at a distance. We were afraid to come too near. The police didn't come to us and ask any questions, except they asked one of the small boys what Kajunia's name was, that was all.[58](#)

We asked the boys present at the shooting whether Kajunia had attempted to steal a purse, as one newspaper article alleged, and whether Kajunia had been armed.⁵⁹ David, who had been with Kajunia just before he was killed, responded angrily to that allegation:

If Kajunia had stolen a purse, where was the purse? There was nothing next to his body, no purse, no weapon. He wasn't armed. If he had tried to steal a purse, then from who? There was no one accusing him of stealing. Even if they thought we were stealing, the police should have whipped him, not killed him."⁶⁰

David added that Kajunia was shot at point blank range, that he had his arms raised in surrender when he was shot, and that the reservist spat on his body before he walked away.

Police Accountability

Establishing police accountability is seriously hampered by the fact that children must complain directly to police about police abuse. The threat of repercussions by police is a serious deterrent to any child coming forward to testify or make complaints against police. Several children told us that for them to even go near a police station would be risking jail time for them. Thus, the majority of cases of police abuse of street children go undetected and unreported. Nevertheless, boys who witnessed the shooting of Kajunia told us they would be willing to come forward if provided with legal protection: "We're afraid and we're nervous. We can't just go to the police station and tell them what happened. We would go if we had protection, if we had a lawyer behind us."⁶¹

According to Rhoda Kimundi, an assistant commissioner of police, the process of making a complaint against a police officer works as follows. There is no special disciplinary unit within the police for the registering of complaints against officers. Individuals can lodge their complaints at any police station. The senior-most officer there would then direct the complaint to another police station or to the police commissioner for investigation. "We don't spare anything on our officers. They can be sacked, depending on the seriousness of the complaint. They can even be prosecuted in court," she said.⁶²

In practice, however, we found that although any individual can lodge a complaint with police at any station, "the police are not bound by law to act, which means that in cases where they are being criticized, it is most unlikely that any decisive action will be taken."⁶³ Thus even if a child were to muster up the courage and defiance to complain to police about police abuse, there is no guarantee that the complaint will be followed up or answered. With regard to legal redress, it is critical to note that police themselves are the ones who make the determination whether or not to level a criminal charge against an officer who is accused of violating the law. "The eminence of the police in the criminal trial process is emphasized by the fact that they must prepare the necessary charge sheet before a trial court can arbitrate over a matter of abuse."⁶⁴ In cases where police do decide to file a criminal charge sheet against another officer, the charge sheet is passed to a prosecutor who is also a member of the police force. The bulk of criminal cases in Kenya are government prosecuted, by "police prosecutors" who are usually employed within a division of the police known as the Criminal Investigation Department (CID).⁶⁵ Police prosecutors are not attorneys but are trained to prosecute criminal cases. They often prosecute criminal cases against ordinary citizens, including street children, as well as cases against other police, raising the possibility of conflict of interest in the latter cases.⁶⁶ If the case is very serious, or if a senior or "high ranking" officer is involved, a state counsel from the Attorney General's Office prosecutes the case.⁶⁷

The Kenya Human Rights Commission, an NGO, reported that police killed eighty-eight people in the first nine months of 1996. According to the Attorney General's Office, twelve police officers were charged with brutality and wrongful killings in 1996. The government prosecuted only several of these cases, resulting in two convictions for murder.⁶⁸

Additionally, it is possible for an individual to bring a private criminal action against the police or an individual. However, this is extremely costly and is well beyond the means of street children and NGOs that seek to assist them :

The government raised court fees for filing and hearing cases by several hundred percent in 1995. The daily rate for arguing a case before a judge, for example, rose from \$10 to \$50. The Law Society of Kenya and many attorneys strongly opposed the increase, saying that the new charges would deny the majority of citizens access to the courts.⁶⁹

The difficulties in mounting a private criminal action against the police are large. This is especially true for street children, who are impoverished and live outside the protection of responsible adults. Further, the attorney general is authorized to take over and continue or discontinue any criminal action which is commenced by an individual.⁷⁰

NGOs have assisted street children in filing preliminary complaints with the police about police misconduct,⁷¹ but have not themselves commenced private legal actions against police, with the exception of Kituo Cha Sheria (an NGO which engages in legal advocacy on behalf of the poor). Even if children's NGOs had the legal and financial resources to do this, the obstacles which they face are high and costly. One NGO that was actively involved in bringing to light facts surrounding the shooting and killing of Simon Kampaniu Kamande was denied registration after it became involved in the case, and has since registered under a new name. Members of that NGO have reportedly been harassed and one member was subjected to short-term arrest by police. Police often view NGOs that work with street children with suspicion and disdain, and NGOs are wary of antagonizing police and jeopardizing their ability to work with the children.

Evidence of the impunity of police is reflected in the case of the killing of Kajunia, described above. Despite the strong evidence that the use of lethal force against Kajunia was wholly unwarranted, no charges have been brought against the police reservist. Apparently, an inquest file was opened by police to record evidence on whether the shooting was justified or not, but no indictment was made against the reservist.⁷² Children said that they still see the reservist walking the streets. "The *afande* [the Kiswahili term of respect for police] is still around. He still comes after us and tries to beat us," said street boy Joseph Mwangii.⁷³ Human Rights Watch sent letters to the attorney general and to the director of CID, inquiring about the status of the inquest, and what measures, if any, are being taken to discipline and prosecute the reservist. As of the date of the printing of this report, no response was received.

In the absence of any visible action on the part of the government to investigate and prosecute the reservist implicated in the shooting of Kajunia, the Kenyan branch of ANPPCAN (African Network for the Prevention and Protection against Child Abuse and Neglect), an NGO, is considering commencing a private criminal action against the police, but has not filed any action to date.⁷⁴

IV. ARBITRARY DETENTION

We didn't sleep at all last night. That's why we're sleeping now, during the day. The daytime is our night time. Night is the most dangerous for us. The police come while we're sleeping and catch you off guard, and grab you and hit you. They'll take you to Makadara court [in Eastlands] and then you'll be sent to remand for months. Last night there was a big roundup and we had to move many times to avoid being caught. There was a large group of police in a big lorry, driving around, looking for kids. They're cleaning up the streets now to prepare for the Nairobi International Show [an annual international commerce and trade fair which takes in Nairobi].⁷⁵

Although prohibited under international and Kenyan law, arbitrary detention is a common occurrence throughout Kenya. Street children are particularly vulnerable to this form of detention, as police and local government administrators become increasingly frustrated with their growing presence. Rounding up and locking up street children is viewed as a way to keep the population in check and to clean up the streets, particularly at times of international

conferences or during holiday seasons, when national and international attention is focused on a city. Law enforcement and government authorities may also justify roundups as a means to identify children and reunite them with their families or place them in appropriate institutions for their care, although the manner in which the children are treated by police and within the juvenile justice system does not reflect that intention or the realization of that end.

The manner in which street children are detained grossly violates children's fundamental rights. Children often stay in police station lockups for days or even weeks, without being formally charged with an offense, with no assistance to suggest that the child's welfare was a motive for the detention, and without having the legality of their detention reviewed by judicial or other authorities. Children are picked up, held in police lockups where they are often beaten and almost always held with adults, and then released back onto the streets. They are not informed of their rights, not provided with legal counsel, and often beaten by police during questioning and in cells.

International and Kenyan Standards

The Convention on the Rights of the Child, ratified by Kenya in 1990, states that "no child shall be deprived of liberty unlawfully or arbitrarily."⁷⁶ The child shall have the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority.⁷⁷ The U.N. Rules for the Protection of Juveniles Deprived of their Liberty⁷⁸ (U.N. Rules for the Protection of Juveniles) mandate that deprivation of liberty should be used only as a measure of last resort, and "for the minimum necessary period and should be limited to exceptional cases" (Rule 2). The U.N. Standard Minimum Rules for the Administration of Juvenile Justice⁷⁹ (the Beijing Rules) also require that a judge or other competent official shall, without delay, consider releasing the child instead of recommending further incarceration (Rule 10.2).⁸⁰ The child's parent or guardian should be immediately notified of the apprehension of the child, or as soon thereafter as possible (Rule 10.1).

Under Article 29 of the Criminal Procedure Code of Kenya,⁸¹ a police officer has wide powers of arrest without a warrant, including the power to arrest:

- (a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;
- (f) any person whom he finds in a highway, yard, or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony; and
- (g) any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself.

Under the Vagrancy Act, a police officer (including an administration police officer) may also arrest without a warrant "any person who is apparently a vagrant." Under Article 2 of the Vagrancy Act, vagrant is defined, among other things, as:

- (a) a person having neither lawful employment nor lawful means of subsistence such as to provide him regularly with the necessities for his maintenance; or
- (b) a person having no fixed abode⁸² and not giving a satisfactory account of himself; or
- (c) a person wandering abroad, or placing himself in a public place, to beg or gather alms.

The Criminal Procedure Code requires that a person arrested without a warrant be brought "without unnecessary delay" before a magistrate or an officer in charge of a police station.⁸³ Officers in charge of police stations must report all arrests without warrants to the nearest magistrate.⁸⁴ If the detention is premised on criminal grounds, the constitution requires that the detainee be brought before a court "as soon as is reasonably practicable" and ordinarily within twenty-four hours.⁸⁵ Assistant Commissioner of Police Rhoda Kimundi told us that children must ordinarily be brought before a magistrate within twenty-four hours of arrest, unless the arrest takes place on a Friday, in which case children will be held until the following Monday before being brought to court.⁷⁶

If the child "cannot be brought forthwith before a court," the police shall release the child "on a recognizance being entered into by his parent or guardian or other responsible person, with or without sureties" except in cases where the child is charged with a serious crime such as murder or manslaughter; or it is in the interest of the child to remove him or her from association with any undesirable person; or if releasing the child would defeat the ends of justice.⁸⁶

Confinement in Police Lockups

Children are regularly picked up individually by police or are rounded up in groups during street sweeps, for no reason other than the fact that they are homeless or because a theft has occurred in the area. Decisions to round up street children are made by the police, sometimes in conjunction with local government authorities and the Children's Department.⁸⁷ "Sometimes the police round up the children on their own initiative, and sometimes I ask them to do it, periodically," said H.O. Miyianda, the provincial children's officer for the Western Province of Kenya.⁸⁸ Other employees of the Children's Department in Nairobi said, "provincial children's officers, in conjunction with provincial commissioners, will decide to round up children and instruct the police. Police sometimes will also liaise with the city commissioner and the city police (city *askaris*) to round up hawkers. Police will also apprehend a child who is found alone."⁸⁹ Rhoda Kimundi told us that roundups are conducted for the purpose of helping the children-"to sort out the children, and feed them, and send them back to their families."⁹⁰ In practice, most roundups are conducted in a punitive manner, and children may end up being charged with the crime of vagrancy or the status offense of being "in need of protection or discipline" in courts.

Roundups occur most frequently in Nairobi, where the numbers of street children are the highest, and take place usually at night. Group roundups also used to occur with regularity in Kisumu, but had dropped off in 1996 due to NGO pressure on police and local authorities.⁹¹ Regardless, children continue to be picked up frequently at night by police. A fifteen-year-old boy from Ahero town in Kisumu district told us that he had been arrested five times, and that most of the arrests had also occurred at night. His most recent arrest had occurred a few months earlier, in June 1996, when he and other boys were asleep near the bus station in Kisumu. They were arrested by a mixed group of regular police and administrative police, riding in a lorry. Twenty boys were caught and held overnight in the courtyard of the police station, before being taken to court.⁹²

The majority of street children whom we interviewed stayed an average of a few days in lockups before being released or taken to court. However, sixteen out of forty-three children who were arrested and held at police stations said they were held in lockups between one week and two months before being released or taken to court: six were held for one week; six were held for two weeks; two were held for three weeks; one was held for one month; and one was held for two months. The excessive duration of periods in lockups is worsened by the fact that conditions in lockups are extremely harmful to children-they are often beaten, almost always held with adults under deplorable physical conditions, and with no form of legal redress. Rarely were children's parents or guardians informed by police of the apprehension of the child.⁹³ Release on bail to a parent or other responsible person was not extended to any of the street children whom we interviewed.

Physical Abuse by Police

Individual arrests and group roundups are conducted with brute force. Children described being grabbed and kicked, hit and sometimes whipped, caned or clubbed by police. Twenty-five out of forty-five children whom we interviewed and who were arrested, said they had been beaten by police at the time of arrest and/or at the police station. Seven out of the forty-five said they had not been beaten.

The Convention on the Rights of the Child states that children deprived of their liberty "shall be treated with humanity and respect for the inherent dignity of the human person" and that no child "shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" (Article 37). The Constitution of Kenya, under Article 74(1), prohibits the same.⁹⁴ The U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials contain guidelines on the policing of persons in custody or detention; law enforcement personnel "shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened."⁹⁵

Beatings are commonly used to punish children for being on the streets, or during interrogations to find out information about a child's background, identity or alleged offenses. Sixteen-year-old Morgan, in Kisumu, described his treatment by police when he was arrested for an alleged forgery:

I was taken to the police station in Maseno market and was put in a cell with about ten men. The first day I was whipped by two policemen in the investigation room. They whipped me while they asked me questions and while two other policemen held me down. I refused to confess to the forgery. On the second day, I was called from my cell into the OCS's [officer in charge of station's] office. The OCS slapped me while he asked me questions. I still denied all the accusations. The OCS then ordered me to kneel on the floor for two hours.⁹⁶

Fifteen-year-old John, from Vihiga district in Western Province, described how he was rounded up by city *askaris* and whipped with a motorcycle cable wire in Kamukunji police station in Nairobi: "Two police men in uniforms questioned me. They asked me questions, like where I was from, where my parents were. Every time I didn't answer a question, they whipped me on my back with a cable brake from a motorcycle."⁹⁷

John also described receiving what he said police called a "welcome" upon first entering the station—a round of kicks, slaps, and hits. Several other children confirmed this practice of "welcoming" children on their first day of lockup. Fourteen-year-old David, from Nyandarua district in Central Province, explained: "usually the first day you're beaten, when they put you in the cell. At that time they'll also hit anyone else who's around. They don't know exactly who the new ones are and who the old ones are so anyone might be hit."⁹⁸ Seventeen-year-old Minga described his detention one month earlier in Parklands Police Station in Nairobi for us: "I stayed in the cell for three days. The first day, I was hit on the head with a pistol and kicked and punched. Whichever policeman would come into the cell and do the head count would hit me."⁹⁹

It appears that street children may be beaten by police as a way of distributing summary punishment to children and to warn and frighten them into behaving, before releasing them back onto the streets. A social worker from Nairobi commented on the police practice of locking up and beating children:

The police response is partly administrative convenience: a summary punishment in the form of corporal punishment is meted out and the "delinquent" is released without charges having to be prepared or court proceedings gone through. Often both sides are content with this. Partly it is exasperation at the inability to solve an insoluble problem. . . . The young person may well know that going to court will only set off a procedure which will result in several periods of remand of a much longer duration, no matter what the outcome of the case itself.¹⁰⁰

Eight out of forty-five children we interviewed, who had been arrested, said that they were released by police at the

station without ever being sent on to court. All eight boys who were released said they were beaten, usually whipped or caned, before being released. Two of the eight said they were released on the same day that they were arrested. The other six reported that they spent between five days and two months in lockups before being released by police.

Physical Conditions in Lockups

The ICCPR requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."¹⁰¹ The Convention on the Rights of the Child requires the same.¹⁰²

The cells in which children are held are often overcrowded, unclean, poorly ventilated, overrun with lice and vermin, and without running water. They are completely bare of any furnishings. All children we interviewed reported that they slept on the floor, usually without even a blanket to cover them. The absence of any bedding material is worsened by the fact that boys and men must usually remove their shirts, along with their shoes and belts, before being put in lockup. Cells were sometimes so crowded that children said they had to sleep sitting up or on their sides, because there was not enough room in the cell to lie down. Children said food was provided one, two, or three times a day, and in small quantities and of poor quality. Usually buckets served as toilets, and if there were toilets attached to the cells, they stank and filled the room with the odor of excrement and urine. Children's descriptions of different police stations are set forth below:

Central Police Station in Nairobi: We were all squashed into the cell, women and girls together. The police hit us with sticks when they put us in the cell. We were squeezed together when we slept on the floor at night. There were no blankets and no mattresses. Nothing. There was a bathroom attached to the cell which we could use whenever we wanted. The toilet smelled. They fed us bad *ugali* [porridge made of maize meal] and *sukuma wiki* [a green leafy vegetable] to eat. I didn't eat it, it looked so bad. Sometimes they gave us water to drink. The police were always yelling at us and checking on us. This one policeman, called Kiragu, beat me. I stayed there for two weeks before I went to court.¹⁰³

Parklands Police Station in Nairobi: The first time I was in Parklands station, I stayed there for only one night. I stayed in a cell with drunk ladies, *changga* [home made alcohol] sellers, and two men. We all slept on the floor. They fed us *ugali* and greens. There was a small hall that served as a toilet. That time I wasn't beaten, but some of the others were. The police made one man bend down and put a finger on the floor and run around in circles while another policeman was kicking him. The next time I was arrested I was brought to Parklands again, and stayed for two nights, but this time I stayed in a different cell-it was larger. There were adults and kids there together, but the adults were taken somewhere else at night to sleep. I didn't have any problems with the adults. The only problems I had were with the police. I woke up in the middle of the night to find police beating me with a stick and kicking me. I must have been asleep when they were taking roll call.¹⁰⁴

We were given toast in the morning and tea without sugar. There was no lunch. In the evening they gave us water and a small amount of *ugali*. We were very hungry. There was no light and no running water, but they gave us drinking water. There were fleas all over the place. We slept on the floor. There were two filthy blankets for all seven of us to share.¹⁰⁵

Kamukunji Police Station in Nairobi: I was forced to clean the police station when I got there. Then they put me in a small dirty cell with some drunk men and two other boys. The cell mates did not mistreat me. The first day I was beaten by two police with a long wooden stick. They called me names-said I was a thief. They didn't ask me questions, they just beat me. There was no toilet in the cell. I peed on the floor. I was hungry all the time. They fed us a half cup of tea in the morning, and a small portion of *ugali* in the evening. That was it. After a week I was brought to court.¹⁰⁶

I was put in a separate room for children in Kamukunji. There were no windows and the room was dark and crowded. There was no light aside from what light came through the sheeting on the ceiling. There was a bucket for a toilet. Sometimes they let the kids out to get water. I was hungry. They fed us once a day, *ugali* and *sukuma wiki* at night. They also gave us a cup of tea in the morning. Two police men in uniforms questioned me. They asked me questions, like where I was from, where my parents were. Every time I didn't answer a question, they whipped me on my back with a cable brake from a motorcycle. After two months there, they let me go. I never went to court.[107](#)

Central Police Station in Mombasa: The cell was small and damp. There were between twelve and twenty people in the cell when I was there. I was the only kid. There were bedbugs and lice. There was only one window and it was very high up. There was nothing in the cell. We slept on the floor. The lights were on twenty-four hours a day. There was a bucket for a toilet. They gave us tea and a slice of bread in the morning, *ugali* and greens for lunch, and the same thing again for dinner with a little water to drink.[108](#)

Police Station in Likoni (near Mombasa): There was only one cell and there were around sixty people in it. We were all mixed together, adults and kids, but the women stayed separately in the corridor. It was so crowded I had to sleep sitting up, with my knees pulled up to my chest. There was a bucket for a toilet, and no running water in the cell. There were no windows and the place smelled. There was a small hole in the door which was the only place where light came in. In the morning they fed us half a cup of tea and two slices of bread. For lunch they gave us a little *ugali* and cabbage, and the same thing for dinner.[109](#)

Police Station in Kisumu: The cell was dirty, with a bucket for a toilet . . . The cell had two small windows with bars and mosquito netting. There were no lights in the room. There were no blankets, nothing at all to sleep on. They fed us twice a day. In the morning they gave us tea and bread, and for supper we got *ugali* and *sukuma wiki*. There was water available in a separate room, which we could get to if we wanted.[110](#)

The cell was small and crowded and adults and kids were mixed together. There were no lights, and no windows, only small vents with wire mesh over them. There was one small window in the door of the cell that faced onto the corridor. There was a bucket for a toilet. The food wasn't enough. They gave us one piece of toast and tea in the morning, and a small portion of *ugali* and *sukuma wiki* for lunch. There was no dinner. At midnight they'd take roll call, and if you didn't answer you'd be caned. We slept on the floor sitting up because there wasn't room to lie down. There were lice on the floor, you could see them.[111](#)

Children Held with Adults

An overwhelming majority of the children we interviewed who had been arrested were locked in cells with adults despite the clear standards in international law that children should never be held with adults. Article 10(1)(b) of the ICCPR and Rules 13.4 and 26.3 of the Beijing Rules require that children suspected of offenses be separated from adults if detained. The Kenyan Children and Young Persons act requires that children under the age of sixteen be detained separately from adults in police stations and while being conveyed between police station and court, and while waiting to attend or leave any court.[112](#) In this regard, Kenyan law is inconsistent with international standards, including the Convention on the Rights of the Child, which require that persons under the age of eighteen not be detained with adult offenders.[113](#)

When questioned about the regular practice of detaining children with adults, Assistant Commissioner of Police Rhoda Kimundi responded, "it could be that the cells were too full. Children should not be mixed with adults unless it is something that cannot be avoided."[114](#) Commingling was found to be the norm, and separation the exception. Three out of forty-three children we interviewed, who were arrested and held at the police station, told us they were held in a separate room or area for children. Thirty told us they were mixed with adults. Almost all were separated by sex.

None of the children we interviewed complained about mistreatment by adult cell mates. However, children commonly complained that police singled them out from adults to perform chores around the station, such as cleaning out waste buckets, and cleaning offices in the station. Fourteen-year-old Augustine, from Kisumu district, told us how he had been caught in a roundup at night along with four other boys, and taken to the police station in Kisumu:

The police caned us and took us to the station. I stayed there for one week. There were men and kids mixed together. Women were in a separate room. The cell was dirty, with a bucket for a toilet. Us kids were made to clean out the bucket every morning, and to clean the shit and urine off the floor.¹¹⁵

Another fourteen-year-old boy told us that in the Central Police Station in Mombasa he was held in a cell with between twelve and twenty adults for six nights. He complained, "the police bullied me because I was the only young boy there. They made me mop the offices, and clean up the other cells. The others didn't have to do this."¹¹⁶

After spending several nights or weeks under these conditions, children are released or taken to court.

V. PROCEDURES FOR CONFINING STREET CHILDREN IN INSTITUTIONS

*I was charged along with four other girls who I didn't know. We hadn't been arrested together but we were all on the same charge sheet. They read us the charges, 'loitering with intent to solicit.' We didn't have a lawyer. The magistrate told us it would be better for us if we pleaded guilty, so we pled guilty. We were sentenced to two weeks in Langata prison, or to pay a fine of 1000 shillings. The whole thing lasted about five minutes.*¹¹⁷

Street children are frequently arrested by police and brought before courts where they are charged with criminal offenses or classified as being "in need of "protection or discipline." Without representation by legal counsel, and without the presence of a parent or legal guardian, these children are subjected to brief hearings on their cases whereby they may be deprived of their liberty and committed for years to juvenile correctional institutions known as approved schools or borstal institutions. Under Kenyan law, children fourteen years old and above also may be committed to regular prisons, although this practice is reportedly rare. Before they are committed to these institutions, children frequently spend excessive periods in temporary detention centers, called juvenile remand homes or remand prisons, pending adjudication of their cases. This section will focus on the procedures by which children are confined to these institutions.

Juvenile Court

The primary law in Kenya concerning children in conflict with the law is the Children and Young Persons Act. The court system in Kenya is three-tiered and consists of a court of appeals, a high court, and lower courts known as magistrate's courts. The Children and Young Persons Act establishes juvenile courts, at the level of magistrates' courts, for the purpose of hearing all charges against persons under eighteen years of age, except in cases where children are charged jointly with adults.¹¹⁸ If a child is brought before a regular court and it becomes apparent that the person is under eighteen years of age, the court must remit the case to juvenile court.¹¹⁹ Juvenile courts must sit in a different building or on different days or at different times from regular courts for adults, and are closed to the general public.¹²⁰ Only one separate juvenile court exists in Kenya, the Juvenile Law Court in Nairobi, presided over by Magistrate Dixon Konya. Other *ad hoc* juvenile courts are convened in regular courthouses throughout Kenya; the courtrooms are cleared of adults before children's cases are heard, or the cases are heard *in camera*.¹²¹

Despite the requirement that children's cases be heard in juvenile courts, sixteen out of forty children that we interviewed who were brought to court, said their cases were heard in regular courts mixed with adult cases. None of the children we interviewed were charged jointly with adults.¹²² Children arrested in or around Nairobi described

being taken to City Court, Makadara Court, and High Court (instead of the Juvenile Law Court) where they were mixed with adults. Outside of Nairobi, where *ad hoc* juvenile courts are convened, children reported that their cases were heard in open court rooms mixed with adults.

A representative of an NGO that works with street children in Nairobi explained how children might be processed as adults and pointed to the critical role that police play in determining which court a child is sent to:

Police have huge discretion in deciding what court you go to. They write the charge sheet and they take you to court. If they think you're older or if the offense is a more serious one, they'll take you to regular court. It's all based on looks. Kids can't explain themselves to the police. There's no time, and they're scared.¹²³

Njuguna Mutahi, of the Kenya Human Rights Commission, similarly commented:

Police decide your age, basically on your looks, and they can make mistakes. There are other problems too-like in rural areas pastoralist children are born at home and have no official registration and may not know their exact age. The police don't care. The magistrates don't care. It especially effects street children who don't have concerned parties to complain on their behalf and point out that they're only children.¹²⁴

Even in the Juvenile Law Court, the one juvenile court in Kenya that is housed in its own building, adult cases are also heard. Reportedly this practice developed during the tenure of the last magistrate, who began asking for adult cases to be brought to court.¹²⁵ According to probation officers at the court, "she decided hearing only juvenile cases was boring."¹²⁶ Whatever the reasons were, the practice has continued to the present.

In the Juvenile Law Court, children's cases are heard at separate times from adult cases. Children are crowded into one of the court's two holding cells, located in an enclosed courtyard behind the main court building. At the time of our visit, on September 17, 1996, the holding cell in which children were kept was completely dark, without any windows or light. There were small air vents at the top where the ceiling met the wall. The only light which came into the cell was through a tiny window in the heavy door. There were approximately forty children in a room of about twenty-five-by-fifteen-feet in size.

Despite Kenyan legal requirements that children's cases be heard in juvenile courts, police and magistrates commonly overlook or neglect to enforce them. There is a clear need for the establishment of more separate juvenile courts throughout Kenya, presided over by magistrates who are specially trained to deal with children's cases. Many NGOs voiced concern over the complete absence of training for magistrates on how to deal with the special needs of children. In areas where it is impractical to establish separate juvenile courts, at least magistrates should ensure that children who come before them are not treated and tried as adults. Police and magistrates should make greater efforts to ascertain the true age of young people in their work, and ensure that children are identified and dealt with as children, in juvenile courts according to law.

Jurisdiction of Juvenile Courts

Jurisdiction of the juvenile courts is broad and extends to "any offence other than manslaughter or an offence punishable by death."¹²⁷ In addition to criminal offenses, jurisdiction of the juvenile court extends to non-criminal cases of children under the age of sixteen who are "in need of protection or discipline."¹²⁸

"Protection or discipline" cases refer to the cases of children under the age of sixteen who are uncontrollable, parentless, deserted, destitute, vagrants, beggars or who fall into "bad associations."¹²⁹ "Protection or discipline" cases are essentially status offenses,¹³⁰ and are subdivided into cases of children "in need of protection and care" (P&C

cases) and children "in need of protection and discipline" (P&D cases).¹³¹ Street children's cases are frequently processed as P&D cases.

Confusing overlaps exist between criminal offenses and "protection or discipline" matters. For example, a child vagrant may be a criminal offender under the Vagrancy Act, and may also be a child "in need of protection or discipline" under the Children and Young Persons Act. Similarly, under certain circumstances a child found begging may be an "idle and disorderly person" or a "rogue and vagabond" under the Penal Code,¹³² and may also be a child "in need of protection or discipline" under the Children and Young Persons Act. Children from both categories are mixed together in police lockups, in court, in remand, and in approved schools (to which children from both categories may be finally committed). Thus, the distinction between children charged with criminal offenses and children "in need of protection or discipline" is obscured and the categorization is in many ways arbitrary; the legal system essentially treats them the same.

Indeed, street children themselves appear to be unaware of the distinction between criminal and non-criminal status offenses for which they are brought to court, and generally view court proceedings to which they are subjected as criminal. It is no wonder, considering that street children are apprehended and beaten by police, held in lockups usually with adult criminal offenders, and processed often in regular courts. They are further detained in remand homes or in adult remand prisons, and finally may be confined for years in correctional institutions where criminal offenders are mixed with those "in need of protection or discipline." The language the children used to describe their experiences in court reflects their view of the proceedings as criminal. Although the words "conviction" and "sentence" are not to be used to refer to decisions in juvenile court,¹³³ children told us that they were "guilty" or "not guilty," even when the facts surrounding their apprehension indicated that they were children "in need of protection or discipline."

Referral of Cases to Juvenile Court

Any authorized officer who has reasonable grounds to believe that a child is "in need of protection or discipline" can apprehend a child without a warrant and bring him or her before a court.¹³⁴ Authorized officers include: a police officer (including administrative police), a children's officer, an approved officer, a chief or a sub-chief. Police apprehend children on the street for vagrancy or upon suspicion of having committed minor criminal offenses and bring them to court. The Children's Department (under the Ministry of Home Affairs) is charged under the Children and Young Persons Act with the protection and care of children and employs approximately seventy children's officers who investigate cases of children at risk or who are "in need of protection or discipline."¹³⁵ Among their many duties, children's officers can bring cases of children "in need of protection or discipline" to court, and can apply for an order committing a child to an institution for the child's rehabilitation and welfare. Approved officers are individuals who are appointed by voluntary organizations that are "approved" by the minister of home affairs to work on issues related to the protection and care of children. Chiefs and sub-chiefs are the lowest level of local government administrators, who work under city commissions. They also may bring children's cases to juvenile court. Parents and private citizens can also bring children directly to police or to children's officers for court referral. Parents occasionally do this out of desire to have their child receive a free education in an approved school,¹³⁶ reflecting more on the limited opportunities for children on the outside, than on the quality or conditions in approved schools.

Through occasional meetings of local bodies known as district children's advisory committees, police, children's officers, NGOs and local government authorities sometimes work together on issues of common concern, in tracing children's families and alerting each other to the presence of children "in need of protection or discipline."¹³⁷ However, by far the most common route of referral to court is through the police.

Rights of the Accused

International and Kenyan Standards

The Convention on the Rights of the Child, ratified by Kenya in 1990, directly addresses the rights of children accused of having infringed penal laws in Article 40 and guarantees, at a minimum, the right to "legal or other appropriate assistance in the preparation and presentation of his or her defense," including "free assistance of an interpreter if the child cannot understand or speak the language used," not to be compelled to give testimony or confess guilt, and to have the matter determined "without delay" by an independent judicial body, or other independent and impartial authority, in a fair hearing according to law, in the presence of a parent or guardian and "legal or other appropriate assistance." Where a decision is made that a child has infringed penal laws, the child has the right to have that decision and any measures imposed in consequence reviewed by a higher competent, independent and impartial authority.

The Beijing Rules also guarantee basic procedural safeguards to children accused of criminal offenses, "such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority."¹³⁸ The Beijing Rules also extend these protections to children accused of status offenses, "who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult," such as family disobedience.¹³⁹ The very recognition of status offenses as punishable conduct is strongly discouraged by the U.N. Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), which recommends that governments should enact legislation prohibiting the very recognition of status offenses.¹⁴⁰

The Criminal Procedure Code and Constitution of Kenya provide certain protections to any person accused of a criminal offense, including the rights: to defend him or herself in court through a legal representative of his or her choice;¹⁴¹ to examine in person or by legal counsel the witnesses against him or her;¹⁴² to be tried by an impartial court;¹⁴³ and to an appeal.¹⁴⁴ "The procedure of hearing juvenile cases [in juvenile courts] is the same as other courts in that the criminal procedure and law of evidence must be followed."¹⁴⁵ As for children, the attendance of the child's parent or guardian may be required during all proceedings, if the parent can be found and resides at a reasonable distance.¹⁴⁶

Kenyan law, however, does not extend these basic protections to status offenders; this is especially problematic for street children who are often brought before courts without being charged with criminal offenses, who are "children in need of protection or discipline." As such, they are without many of the rights supposedly enjoyed by children charged with criminal offenses, in contravention of international law. In practice, however, both categories of children rarely are able to exercise these rights.

Kenyan Practice

We observed proceedings in the Juvenile Law Court in Nairobi on two separate occasions. Juvenile court proceedings are closed to the public-the only people allowed in the court room are the parties to the case, their attorneys and witnesses, parents or guardians, the magistrate, probation officers and children's officers, the police prosecutor, court clerks, and any other person that the court may specially authorize to be present. The magistrate in charge of the court, Dixon Konya, allowed Human Rights Watch to attend court sessions on two mornings, when "mentions" were being heard.¹⁴⁷ Mentions are essentially arraignments or preliminary hearings, and last no longer than a few minutes per case. However, many children's cases never move beyond the mention phase, as will be discussed below.

The Beijing Rules state that proceedings "shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."¹⁴⁸ However, we found the atmosphere of the court room to be intimidating and frightening for children, as well as rushed. Thirteen-year-old Peter, from Nairobi,

said of his experiences in the Juvenile Law Court "it's like the judge has already made up his mind that you're guilty, from the moment he asks you the first question."¹⁴⁹ *Ad hoc* juvenile court proceedings are also reported to be conducted in an intimidating manner:

[M]ost court officers do not conduct themselves as they should in Juvenile Court. For a start, there is only one Juvenile Court in the whole country -- in Nairobi. In all other stations, the magistrates have to convene these courts as special sessions of the ordinary courts. This they normally do without regard to the provisions of the law regarding the conduct of a children's court. As a result, children in these courts are subjected to great fear, as prosecutors, advocates, and other court officers addressing them in an intimidating manner in order to get them to make admissions.¹⁵⁰

On each morning in the Juvenile Law Court, we observed that the children were brought in from the holding cell of the court in a large group and crowded onto benches in the court room. There was barely enough room on the benches to accommodate the forty-five and forty-nine children on each day. Many had been brought directly from the police station and others had been brought from remand. Almost all appeared to be street children. They ranged in age from the very young, about six years old, to adolescents. They all looked dirty, dressed in ragged and soiled clothes, and many were barefoot. The proceedings took place at a rapid pace with no more than a few minutes spent on each case.

The new cases of children brought directly from the police station were called first. The most frequent charge against children on both days was vagrancy. Cases were called one at a time. Each child would rise from the bench and step forward to be questioned by the magistrate who was seated behind a desk on a raised platform at the head of the court room. The magistrate would ask the children where they were from, where they lived, where their parents were, and if the children had any money. Often visibly frightened, the children sometimes did not respond to questions, or responded inaudibly, to which the magistrate would command them to speak louder.¹⁵¹ At times the magistrate lost his temper, and sharply scolded children or warned them that if they were found on the streets again they would be jailed.

Referral of cases to children's officers or probation officers

If the case was a "protection or discipline" matter, the magistrate would refer the case to a children's officer for preparation of an "investigation report" (the equivalent of a social inquiry report), and tell the child to sit down. If the "protection or discipline" case was old, and had already been assigned to a children's officer, the officer would rise and present the recommendations of the investigation report (on what correctional measure to order). Often the investigation report was not ready and the officer would request more time for its preparation.

If the charge was a criminal offense, the magistrate would ask for the plea. In City Court¹⁵² in Nairobi, where sixteen-year-old Elizabeth was taken a year earlier, she described being advised by the magistrate to plead guilty: "It would be better" for her, she was told by the magistrate.¹⁵³

Once an admission of guilt was entered, the magistrate would assign a probation officer to the case for the preparation of a "pre-sentencing report." If the case was old, and a probation officer had already been assigned to the case, the officer would rise and present the recommendation on sentencing to the magistrate. If the child pled "not guilty," a court date would be set for the child to reappear for another mention or for trial.

Translation and explanation of proceedings

The proceedings were conducted in Kiswahili and English. Occasionally a child would be called who spoke neither, and one of the court officers would interpret portions of the proceedings for the child. However, occasionally interpreters are not available, as was the case for fourteen-year-old Gordon. He told us how two years earlier he had been rounded up off the streets and brought to the Juvenile Law Court:

The judge spoke to me in Kiswahili but I didn't understand. I only speak Luo. People in the court room started laughing at me. The judge motioned for me to sit down. At the end, I was brought to his chambers, and he spoke to me again in Kiswahili. Then he caned me. From there I was sent to Kabete remand [Nairobi Juvenile Remand].¹⁵⁴

On the days we observed proceedings in the Juvenile Law Court, the magistrate made efforts to explain to children what was happening to them (where they were being sent, what correctional measures he was ordering, or when they would have to reappear in court). However, several children we interviewed told us that in other courts they were not informed of the status of their cases, were confused about the nature and purpose of the proceedings, and were unaware of the disposition of their cases. For example, fifteen-year-old Tom told us of his first experience in the High Court in Kisumu in June 1996, after he was rounded up while sleeping near the bus station:

No one talked to me or explained anything that was happening. The magistrate asked me where I was from, and why I had left home. He didn't tell me what he had decided for me. I figured he had decided to send me to remand, where most kids get sent, and I was right. I was taken to juvenile remand home where I stayed for three days, and was then just released."¹⁵⁵

Similarly, another street boy in Kisumu expressed his confusion over court proceedings, after he was charged with being a "rogue and vagabond":

From the Central Police Station in Kisumu I was brought to court and sent to Kodiaga remand prison. . . . I went back to court three times, every two weeks. The first time I went, the judge wasn't there. I was brought into a room and was questioned by some people. I don't know who they were. After another two weeks, it was the same procedure again. Then the third time I went back I saw the judge. He turned me over to the police and they brought me to the Central Police Station. I didn't know what was happening. The judge didn't tell me anything. Then from the police station, the police took me to Kiambu and left me with my parents.¹⁵⁶

Presence of parent or guardian

Parents or guardians were rarely present at the proceedings that we observed. Only five out of forty children we interviewed, who had appeared in court, said that a parent or guardian had been present for a part of the court proceedings. In the Juvenile Law Court, we observed that parents must wait outside the courtroom in the hallway and are called in when their child's case is called. A representative of a street children's NGO in Nairobi told us that sometimes cases were called so quickly that it was possible for a parent to miss the case entirely.¹⁵⁷ Once in the courtroom, the parents appeared to be as intimidated as the children before the magistrate. In non-criminal cases, the child was released to the parent then and there if the parent was willing to accept the child. In one case that we observed, however, the parent told the magistrate that she did not want the boy released to her because she could not control him. The boy broke down into tears as the magistrate announced that the boy was a "delinquent" and would be sent to an approved school.

Legal or other assistance

None of the children on either days were represented by attorneys, and none of the forty children we interviewed, who had appeared in court, had legal counsel at any time. Legal representation is so rare that two probation officers attached to the Juvenile Law Court told us the last case they remembered where a child had legal counsel was sometime the year before, in 1995.¹⁵⁸ Eric Oluoch Ogwang, a former magistrate of the Juvenile Law Court, explained that very few parents can even afford to come to court in Nairobi, let alone afford to hire an attorney for their children.¹⁵⁹ He said that during his tenure he often found himself in the awkward position of trying to play both the role of children's advocate and judge, especially for children charged with criminal offenses whose cases are prosecuted in court by

police prosecutors.¹⁶⁰

Considering that street children are rarely if ever represented by attorneys, whether charged with criminal or non-criminal offenses, it is no surprise that they do not exercise the right to appeal. Probation officers attached to the Juvenile Law Court told us, "kids don't think of appealing, they think of escaping. Even if they're told that they have fourteen days to appeal, they don't, they just think of escaping. They don't even understand what appealing means."

A number of NGOs said they would like to apply to have their own social workers recognized by the Children's Department as approved officers, which would enable them to speak on behalf of children in juvenile court. As mentioned earlier, approved officers are individuals who must be "approved" by the minister of home affairs ("gazetted" by the Children's Department) to work on issues related to the protection and care of children. They are authorized to bring children's cases to court and to appear in court on behalf of children "in need of protection or discipline." "We need our own approved officers to represent our children when they appear in juvenile court," said Josephine Mulli, the head of community organization at the Undugu Society of Kenya.¹⁶¹ A number of NGOs complained that the process of being "gazetted" was overly difficult and recommended that the procedure be simplified in the interest of enabling social workers who work with street children to provide assistance to children in court proceedings. Easing restrictions for gazetting approved officers would enable NGOs working with street children to assist children in court, and would also allow NGOs greater access to children in institutions, which they are currently denied.

Committal to Remand Detention

International law requires that "[d]etention before trial shall be avoided to the extent possible and limited to exceptional circumstances When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention."¹⁶² Whenever possible, detention pending trial should be replaced by alternative measures.

Under Kenyan law, pending adjudication of a case, courts may order that children be detained in either a juvenile remand home or a remand prison, depending on the age and behavior of the child. Children under the age of fourteen are to be detained in juvenile remand homes, which are under the administration of the Children's Department.¹⁶³ Fourteen- and fifteen-year-olds may be detained in either juvenile remand homes or in remand prisons for adults if the court finds that the child "is of so unruly a character that he cannot safely be remanded in custody to a juvenile remand home."¹⁶⁴ Sixteen- and seventeen-year-old children are to be remanded to adult remand prisons, which are under the administration of the Prisons Department.

Kenyan courts almost always order that street children be remanded pending final adjudication of a case. Out of forty street children we interviewed who had been brought before courts, thirty-five were detained in remand pending adjudication of their cases or execution of their sentences. The five who were not remanded were discharged. Among the children who were remanded, two were remanded to police stations where they stayed for one week before being finally committed to an approved school or borstal institution. Nine were remanded to adult remand prisons, where several were held with adults; they were between twelve and seventeen years old at the time.¹⁶⁵ The rest were remanded to juvenile remand homes.

There are no limits under Kenyan law on the period of remand, so long as the child reappears in court every two weeks for a mention.¹⁶⁶ Periods of remand usually vary from a few days to several weeks or months, and occasionally years. Six out of the thirty-five children we interviewed who were remanded spent over six months in remand before they were finally committed to permanent correctional facilities or received a final disposition on their case. Two had been in remand for over a year and were still in remand at the time of our interviews. On our visit to Nairobi Juvenile

Remand Home (known as Kabete) staff told us that "some kids have been here for three years, about ten kids have been here since 1994."[167](#)

One reason for the detention of children in remand homes for excessive periods of time is that children's officers do not complete their investigation reports in a timely manner. An officer preparing a report must interview the child and, where possible, the child's family members. Sometimes a trip to the child's home village is required. Further children's officers are generally overworked; preparing investigation reports for children "in need of protection or discipline" is only one of many duties of children's officers. On one of the days that we attended court, a children's officer told us that she and another officer had been assigned twenty P&C cases that day alone.[168](#) Sometimes probation officers are called upon by courts to prepare reports for children "in need of protection or discipline," to relieve some of the burden which would otherwise fall on children's officers.[169](#) Still, we found that many children fall through the cracks, and spend months in remand before their investigation reports are ready.

Another reason for delays, in the cases of children who have pled "not guilty" to criminal offenses, may be that the prosecution has not been able to prepare its case against the child. "The law does not stipulate the period within which the trial of a charged suspect must begin. The Government has acknowledged cases in which persons have been held in pretrial detention for several years, usually because of backlogs."[170](#) Witnesses or other concerned parties may not be available, or might not show up for the hearing date. One boy we interviewed in Likoni Juvenile Remand told us "I've been here for three years. I go to court every two weeks. I was accused of stealing a bed cover, but there's no evidence against me, because the police didn't bring the bed cover in."[171](#)

Fully aware of the often lengthy periods of remand which follow a plea of "not guilty," many children plead guilty to criminal charges because they know the remand period is likely to be shorter. After a guilty plea is entered, a probation officer is assigned to the case and usually issues a pre-sentencing report within a period of two to four weeks. Upon the admission of guilt, magistrates sometimes decide sentences on the spot, if the offense is a minor one. Probation officers at the Juvenile Law Court explained:

Some children just plead guilty because they think things will happen faster. They don't want to stay in remand. The conditions there are bad-not enough food and many kids get scabies. In adult remand prison it's even worse. They plead guilty because they want to get out faster. Then when we meet with them to prepare the pre-sentencing report they tell us of extenuating circumstances or say that they didn't do it.[172](#)

Six out of forty children we interviewed, who had been brought to court, told us that they pled guilty because they did not want to stay in remand. Some had been advised by cell mates to plead guilty. "My cell mates at the police station told me to say I had done it, or else I would be sent to Kodiaga [adult remand prison]. So when I was brought to court, I pled guilty and the magistrate sentenced me right there to borstal institution," said Brian, who had just been released from Shikusa Borstal Institution.[173](#)

Even if a child pleads guilty, however, the proceedings are not always expeditious. For example, fourteen-year-old Simon, who sleeps in a roundabout[174](#) in Nairobi, told us:

The magistrate asked me if I stole the light and I said yes. I said yes because I thought I'd be released faster. Then the magistrate said they needed to find the complainant [the person whose light had been stolen], and they sent me to Industrial Area Remand [for adults]. I stayed there from May to September, and was just released this month. I got twelve strokes with a plastic stick, on the back sides of my legs, and was made to wash the rooms in the court building.[175](#)

He spent four months in adult remand, after pleading guilty to theft, awaiting sentence.

Further, once the magistrate orders correctional measures to be taken, they are not always immediately executed. During the interim period between sentencing and execution of the sentence, children are detained in police station lockups or on remand, waiting. For example, a child could spend weeks or even months in remand waiting for transport back home or for a parent to come and collect the child.¹⁷⁶ "And they don't get to reappear in court again, because they've already been sentenced," commented a representative of an NGO that works with street children in Nairobi;¹⁷⁷ thus their cases could go unmonitored by courts for months.

The practice of detaining street children in remand for unlimited periods of time contravenes established principles of international law which require that pre-trial detention be used only as a last resort and for the minimum period necessary.¹⁷⁸ The harmful effects of remanding children to institutions where they are mixed with criminal offenders and sometimes adult criminal offenders is magnified by the abusive conditions inside, particularly in adult remand prisons. Conditions in remand centers will be discussed below in Section VI of this report (on conditions in institutions).

Disposition of Cases: Sentencing

International law and standards provides basic guidelines on the adjudication and disposition of children's cases. The Beijing Rules require that courts investigate and consider the child's background and circumstances (in the form of a social inquiry report) before rendering a final disposition prior to sentencing, and that "[d]eprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offenses and unless there is no other appropriate response."¹⁷⁹ Restrictions on the personal liberty of children shall be imposed only after careful consideration and for the minimum period necessary.¹⁸⁰ The Convention on the Rights of the Child calls for the use of a variety of alternatives to institutional care "to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."¹⁸¹

Kenyan law provides for a variety of correctional measures, including alternatives to institutional care. The juvenile court is authorized to dispose of a "protection or discipline" (P&C or P&D) case by ordering: release to a parent or guardian (either directly or through a repatriation order), committal to the care of a fit person or an approved voluntary institution, placement under the supervision of an approved officer or a children's officer, or committal to an approved school.¹⁸² The juvenile court is authorized to dispose of a criminal case by ordering: discharge, probation, corporal punishment,¹⁸³ payment of a fine or compensation, committal to the care of a fit person or an approved voluntary institution or approved society,¹⁸⁴ committal to an approved school (if the child is fifteen years old or younger), committal to a borstal institution (if the child is fifteen years old or older), or committal to an adult prison (if the child is at least fourteen years old).¹⁸⁵ Again, there is an overlap between criminal and "protection or discipline" cases in that children from either category may be committed to approved schools.

Magistrates have been criticized for their overuse of institutionalization as a correctional measure for children. In a 1995 report issued by ANPPCAN Kenya, a prominent children's NGO, it was stated:

Whereas Section 17 of the Children and Young Persons Act provides for a whole range of penalties for children convicted of offences under the Act, the magistrates tend to overuse the penalty of institutionalization (sending the offenders to approved schools). These schools are few in number and offer conditions that are not always conducive to the rehabilitation of children. The schools were set up with the aim of rehabilitating the children back to normal social life, but they are said to be run on principles that have little room for the welfare of the child, and as a result they have failed to rehabilitate a large number of children admitted there. Indeed, some of the children are said to have run away from those schools and back to the streets, where they feel safer.¹⁸⁶

Out of the forty children we interviewed who had appeared in court, twenty-two were ordered to be deprived of their liberty as punishment; twelve were committed to approved schools; three were committed to borstal institutions; and seven were committed to adult prisons (five of the seven were girls who were committed to Langata prison for women). The other eighteen children had their cases disposed of as follows: four were released; five were ordered to be repatriated back to their families in their home villages; one was released with a fine; two were given strokes and released; and six had not yet been sentenced and were still on remand.

The sentence and its duration are determined by the magistrate, usually following the recommendation of the children's officer or the probation officer in their investigation or pre-sentencing report. The period of committal to approved schools may extend up until a child reaches the age of eighteen.¹⁸⁷ However, children may sometimes stay in an approved school until they reach twenty years of age, in order to complete their education and sit for exams. We were told by the manager of Likoni Approved School that almost all the boys there are "from the streets" and "most are about thirteen or fourteen years old when they come, and usually stay until they turn eighteen."¹⁸⁸ The deputy manager of Kirigiti Approved School also told us that most girls there stay until they turn eighteen.¹⁸⁹ Committals to borstal institutions are always for three years.¹⁹⁰

Although consideration of a "social inquiry report" is normally required for the judicious adjudication and disposition of a case, we found that magistrates sometimes order correctional measures on the spot without consideration of an investigation or presentencing report. We observed this in the Juvenile Law Court in Nairobi and were told the same by children we interviewed. Upon pleading guilty to minor offenses, magistrates sometimes immediately ordered that children receive a number of cane strokes, or ordered them to perform chores around the court house (extra-mural penal employment) before being released. With backlogged and overburdened case loads, the summary disposition of cases involving minor offenses can be appropriate, in the interest of sparing children lengthy detentions on remand and in the interest of conserving judicial resources.¹⁹¹ However, it is wholly inappropriate where the correctional measure ordered is deprivation of liberty or corporal punishment.

We found that it is not unusual for magistrates to order the deprivation of liberty (committal to an approved school or borstal institution or even a prison) without consideration of a pre-sentencing report. This happens most frequently in the cases of children who are tried in regular courts where they are mixed with adults. For example, four girls told us that they had each been arrested and taken to regular courts in Nairobi, where the magistrates sentenced them on the spot to Langata prison for women after they pled guilty to charges of "loitering with intent to solicit." Three of the girls were fourteen or fifteen years old at the time of arrest.¹⁹² Masi, after spending three nights in lockup at Central Police Station, described her court hearing:

From the police station, we were taken to City Court. The other two girls and me were the only kids there. The rest were all adults. The others in the cell advised me to plead guilty, because if I didn't, I'd be sent to remand. So when I got to court I pled guilty, and the magistrate said I was sentenced to Langata prison for one month.¹⁹³

Seventeen-year-old Brian told us how he had been arrested in 1995, when he was sixteen. After spending one week in a crowded police cell in Kisumu police station, where he was caned by police, he was brought to court. He pled guilty to the charge of theft and was sentenced on the spot to three years in a borstal institution.¹⁹⁴ No consideration appears to have been given to the age of the children in these cases; they appear to have been tried as adult criminal offenders in regular courts with no regard for the special protections accorded to children—clearly, magistrates and police need to make greater efforts to ascertain the age of any young persons coming before them in their work to ensure that children are identified and dealt with accordingly.

VI. CONDITIONS IN INSTITUTIONS TO WHICH

CHILDREN ARE COMMITTED

When a person is taken into state custody, the government is obligated to meet certain minimum requirements under international law regarding the conditions under which the person is detained. The institutionalization of street children in Kenya fails on two counts. It fails to address the root of the problem which leads to the deluge of children on the streets, the economic and social hardships which lead children to take to the streets. It also fails as a remedial measure to provide children with the rehabilitation, support, and education required to enable them to live in the outside world as responsible and capable members of society. We found that the conditions in juvenile institutions in Kenya, to be discussed below, are often even counterproductive to these goals.

International Standards

Physical conditions

The U.N. Rules for the Protection of Juveniles set forth detailed specifications on the physical environment in which children can be confined. The U.N. Standard Minimum Rules for the Treatment of Prisoners does the same for prisoners generally; its application is extended "to the treatment of juvenile offenders in institutions" under Rule 27 of the Beijing Rules. These standards, although non-binding, have been recognized in the international community by adoption as General Assembly resolutions. They provide an authoritative statement of the international community's agreement on the minimum standards under which children may be confined by the state.

The U.N. Rules for the Protection of Juveniles state that children shall have the right to facilities and services that meet all the requirements of health and human dignity.¹⁹⁵ The facility's physical environment should be designed with the aim of rehabilitation and with due respect for the need of children for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.¹⁹⁶ Every juvenile should be provided with sufficient bedding, which should be kept clean and in good order.¹⁹⁷ Sanitary installations should be of a sufficient standard to enable every juvenile to comply with his or her physical needs in privacy and in a clean and decent manner.¹⁹⁸ Children should have the right to use their own clothing, to the extent possible, and care should be taken to ensure that children have adequate clothing for the climate.¹⁹⁹ Suitably prepared food should be provided at regular meal times and should meet standards of dietetics, hygiene, and health.²⁰⁰

The U.N. Standard Minimum Rules for the Treatment of Prisoners similarly require that facilities provide adequate sleeping accommodation with due regard paid to the provision of sufficient bedding,²⁰¹ adequate sanitary installations,²⁰² bathing and shower installations,²⁰³ toilet articles,²⁰⁴ and regular meals of adequate nutritional value.²⁰⁵

Education and vocational training

The U.N. Rules for the Protection of Juveniles detail the parameters of the right to education, vocational training, and work for children deprived of their liberty.²⁰⁶ Children of compulsory school age have the right to education which should be "designed to prepare him or her for return to society."²⁰⁷ Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programs.²⁰⁸ Although education is not yet compulsory in Kenya, the Kenyan government has committed itself to providing tuition-free education at the primary level (standards 1-8) to all. That commitment should also extend to children who are deprived of their liberty by the state, with an additional commitment to provide them with books and study materials.

Children deprived of their liberty have the right to receive vocational training in occupations likely to prepare them for

future employment,²⁰⁹ and those who work should receive equitable remuneration for their labor.²¹⁰ The Beijing Rules state that the objectives of institutional treatment of children are to provide education and vocational skills "with a view to assisting them to assume socially constructive and productive roles in society"²¹¹ and "with a view to ensuring that they do not leave the institution at an educational disadvantage."²¹²

Discipline and punishment

As mentioned earlier, international law is clear and consistent in its prohibition of torture and inhuman or degrading treatment of children. The Convention on the Rights of the Child states that children deprived of their liberty "shall be treated with humanity and respect for the inherent dignity of the human person" and that no child "shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."²¹³ The Beijing Rules provide that "[j]uveniles shall not be subject to corporal punishment."²¹⁴ The U.N. Rules for the Protection of Juveniles prohibit the use of restraints or force on children unless all other control methods have been exhausted and failed,²¹⁵ and prohibit all disciplinary measures constituting cruel, inhuman or degrading treatment, "including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned."²¹⁶ They explicitly prohibit "the reduction of diet and the restriction or denial of contact with family members" for any purpose, and the use of labor as a disciplinary sanction.²¹⁷

Grievance procedures

The U.N. Rules for the Protection of Juveniles require that, upon admission to a detention facility, all children be given a copy of the institution's governing rules and a written description of their rights and obligations so that children may understand, among other aspects of their confinement, the disciplinary requirements and procedures of the institution and the mechanisms by which they can raise complaints to competent authorities.²¹⁸ They further require that children be allowed to make uncensored complaints to the institution's director, central administration, or any other proper authorities, and be informed of the response without delay.²¹⁹

Remand Institutions

Juvenile Remand Homes

Juvenile remand homes, established under Article 36 of the Children and Young Persons Act, are under the administration of the Children's Department, which also oversees the running of approved schools. There are eleven such homes in Kenya, with a reported total capacity of 2,500 children.²²⁰ The three most common legal bases for the detention of children in juvenile remand homes are: "destitution and vagrancy" (1,800); "beyond parental control" (500); and "found begging" (480).²²¹ The overwhelming majority of the population in juvenile remand homes is comprised of street children. Staff at Nairobi Juvenile Remand Home, told us that "90 percent of the kids are here because of vagrancy."²²² No efforts are made to separate children by the severity of their offenses, or to separate children accused or convicted of criminal offenses from children "in need of protection or discipline." This practice contravenes international standards which require that "[u]ntried detainees should be separated from convicted juveniles"²²³ and may have criminalizing effects on children.

The Children's Department has issued internal rules and regulations "for the good administration of children's institutions throughout the country."²²⁴ These regulations require, among other things, that the manager of any children's institution keep detailed records of all committals of children to the institution, including an admission and discharge register, daily log book, punishment register, and individual case files for each child (Regulation 2). Records must be available for inspection at all times by children's officers or other authorized persons, who may inspect the institutions with or without notice. Parents or guardians may be granted reasonable access to visit and communicate

with children (Regulation 3). Corporal punishment should be avoided, particularly for children under the age of seven, "unless absolutely necessary and should be administered by the manager and recorded in the corporal punishment register" (Regulation 6). The rules and regulations also call for the provision of adequate space to accommodate the children, separate beds and bedding for each child, adequate sanitary installations, "water supply to be ensured all the time," a balanced diet, and arrangements for the educational and recreational needs of each child.²²⁵

Conditions in remand centers vary but generally suffer from common problems of run-down facilities, inadequate supplies of water and inoperative sanitary installations, inadequate and dirty bedding materials, the frequent use of corporal punishment and no provisions whatsoever for the recreational and educational needs of children. Overcrowding was found to be severe in Nairobi Juvenile Remand Home.

We visited Nairobi Juvenile Remand Home (Kabete) on October 4, 1996, with the permission of the Children's Department. On the day of our visit, 153 children (125 boys and twenty-eight girls) were present in the home. Staff stated that the capacity of the home is eighty.²²⁶ They told us that, "sometimes the number goes up to around 500, like in mid-September, because of police roundups."²²⁷ The children ranged in age from seven to sixteen. There were four dormitories, three for boys (divided by age) and one for girls. The buildings were arranged around a courtyard in which the children take their meals. According to staff, children are given porridge in the morning and sometimes bread. Lunch consists of rice with beans or another vegetable, and *ugali* and beans for dinner. The dorms contained rows of bunk beds, with mattresses, and usually a blanket for each bed. Some beds had no blankets, and none had pillows or sheets. Children we interviewed on the street who had been confined there, said they had to share beds, sleeping two to a bed, and that mattresses were dirty and "blankets were infested with lice and bedbugs."²²⁸ The dorms had grilled windows on one wall; ventilation was poor and the rooms smelled of body odor. Attached to the girl's dorm was an "ablutions area," which contained three squat toilet stalls, shower stalls, and two sinks. One of the sinks was filled to the brim with brown water and appeared to be clogged. When the faucet was turned on, no water came out. The toilets were backed up and clogged with excrement. In the "ablutions area" attached to the dorm for middle-aged boys, both sinks were missing from the base. Children we interviewed on the streets who had been confined there complained of constipation, scabies, and lack of water.

We visited Likoni Juvenile Remand Home, near Mombasa, on September 27, 1996 with the permission of the Children's Department. The remand home is located on the same grounds as Likoni Approved School. The remand home consists of two barn-like corrugated tin structures, one for boys and one for girls. According to the staff, there were twenty-two children staying in the remand home when we visited.²²⁹ The girls' room was very dark and had only one window. The ventilation was extremely poor. There were a few foam mattresses pushed together on the floor in the middle of the room with some blankets strewn on top, on which all the girls slept together. There was an attached bathroom which was so poorly lit that we could not make out its interior. It appeared to be a hall with two dark stalls, and a large metal drum containing hauled water. The boys' room was larger, but equally dark and poorly ventilated. There was a stack of foam mattresses in the rear of the room, with a pile of blankets, that are brought out at night for the boys to sleep on. Aside from the bedding materials, both rooms were completely bare. The children receive their meals from the approved school, located nearby, but do not mix with the children there.

More disturbing than the physical conditions in which children are confined, was the complete absence of any educational or recreational activity for children, the deprivation of which has aggravated effects when children are held in remand for long periods of time. As stated earlier, some children can stay in remand for years without so much as a book or a ball to provide them with stimulation. In all three remand homes we visited (Nairobi, Likoni, and Kisumu),²³⁰ the schedule of the children was the same. Children rise in the early morning, perform chores and eat porridge. They then stay in the compound, usually in an enclosed courtyard or in their dorms, until lunch is served at noon. After lunch they are usually locked in their dorms again until dinner is served at around 6:00 p.m. After dinner they are locked in for the night. There are no activities for the children throughout the day, educational or recreational,

aside from an occasional visit from NGO volunteers who provide the children with a brief respite from the tedium of the day.

At Nairobi Juvenile Remand Home (Kabete), although we were told by staff that children are free to play outside in the courtyard, we observed during our visit that the grounds were eerily silent and that there were no children in sight. We observed through the dormitory windows that all the children were in their dorms, lying on their beds (two children per bed), with the doors shut and locked from the outside. When we asked staff why the children were not free to play in the enclosed courtyard, they responded that the children wanted to stay inside. One of the boys who we interviewed on the streets who had been confined there, explained, "unless we're working or eating, we're locked in the dorm."²³¹ In Kisumu Juvenile Remand Home, children also reported that they spent their days shut in their dorms, except when working or eating:

We would rise at about 5 a.m., and do exercises and chores, like cleaning the rooms and the toilets. Then we'd have breakfast at 7 a.m. Then we'd have to go back in the dorm and stay inside until lunch. Some kids would be selected out to go work on the farm, cutting grass and digging. The older boy leaders, the ones who had been there a long time, decided which kids would have to work on the farm. At noon, we were allowed out of the dorm and given lunch, and then shut inside again until supper.²³²

Similarly, in Likoni Juvenile Remand Home, fifteen-year-old Mugambi told us he had no complaints "but there's nothing to do all day except go and haul water."²³³ At the time of our interview, he had been in remand for three years.

Further, children said that they are beaten or caned by staff if they misbehave or fight with other children. One boy we interviewed said he had been beaten by staff on a daily basis while in Nairobi Juvenile Remand, "with a strip of rubber from a tire."²³⁴ Another boy who had been confined in Likoni said a few boys that tried to escape were beaten by five teachers from the attached approved school while he was there.²³⁵ Fifteen-year-old Alfred, who was remanded in Kisumu Juvenile Remand in June 1996 described being caned not by staff, but by senior boys at the remand home who appear to play a supervisory role for other children.²³⁶

Adult Remand Prisons

Under Kenyan law children fourteen years old and above may be remanded to adult remand prisons, "where they must be kept separate from the adults."²³⁷ Remanding children to adult facilities happens all too frequently; nine out of thirty-five children we interviewed who were committed to remand institutions were sent to adult remand prisons. The youngest was twelve years old. In contravention of international law, the children are often commingled with adults in the remand prisons. More important, conditions in adult remand, whether in a separate children's section or mixed with adults, are extremely abusive. The atmosphere is penal. Unlike juvenile remand homes, which are under the administration of the Children's Department, remand prisons are under the administration of the Prisons Department.²³⁸ Children there face serious problems of overcrowding, unsanitary conditions, hunger, and physical abuse far worse than in juvenile remand homes.

The U.S. Department of State's report on human rights in Kenya for 1996 summarized conditions in prison, including remand, as follows:

Prison conditions are at times life threatening, due in part to lack of resources, and in part to the Government's unwillingness to address deficiencies in the penal system. Prisoners are subjected to severe overcrowding, inadequate water, poor diet, substandard bedding, and deficient health care. In October 1995, Justice Emmanuel O'kubasu stated that Kenyan prisons are "death chambers." The same month, Home Affairs Minister Francis Lotodo reported that 814 prisoners had died in jails in the first 9 months of 1995, due chiefly to dysentery and diarrhea. As of August 1994,

Kenya's 78 prisons held a daily average of 39,000 inmates, 12,000 of whom were awaiting trial. Some facilities such as the Nairobi Remand Prison, are overcrowded by several hundred percent. Rape of both male and female inmates is a serious problem, as is the growing incidence of AIDS. Prisons do not have resident doctors, and only one prison had a doctor permanently assigned. . . . Officially, there is separate confinement for men, women, and children. However, there are cases in which men and women have been put in the same cells, and youths (as young as early teenagers) are frequently kept in cells with adults in overcrowded prisons and remand centers. The Government does not permit independent monitoring of prison conditions.²³⁹

Although we were not permitted by the Prisons Department to visit any remand prisons, we were able to interview children on the streets who had been detained in four remand prisons: Industrial Area (in Nairobi), Shimolalewa (in Mombasa), Kodiaga (in Kisumu), and Langata (for women, in Nairobi).

Children reported that conditions in Industrial Area Remand were particularly severe. In December 1994, Minister of Home Affairs Francis Lotodo stated that there were 583 deaths in Nairobi Industrial Area Remand Prison in the preceding four years,²⁴⁰ yet children continue to be remanded to this facility. Children told us they slept on the floor, without mattresses, in extremely crowded rooms. A few had blankets, which they said were filthy and lice infested. Toilets were overflowing and made the rooms stink. Drinking water was available in very limited quantities, and bathing facilities were nonexistent. Sixteen-year-old William described physical conditions in Industrial Area's section for boys, as follows:

There was a toilet in the room, but no water. There were eighty-seven of us in the room. The room smelled, and there were bugs and lice, bedbugs, cockroaches and even rats. We had some blankets, but no mattress or beds. It was so crowded, I had to sleep outside the room, by the toilet, sitting up. After a week, [the inmates] let me sleep in the room, on my side because there wasn't enough room to lie on your back. The windows were barred, and there were lights on in the cell which they kept on while you slept. They brought us one bucket of water at night for all the boys.²⁴¹

Similarly disturbing conditions were described in Kodiaga remand:

There were four cell blocks. I was in block C with about twenty-five other boys. There were no windows, but there were vents at the tops of the walls. There was nothing in the room, aside from a few rags to sleep with. There was a toilet, but no running water. They brought us water to drink, but not enough. Everyone was filthy. There was no water to wash with and no soap either. There was a cement ditch filled with water that they allowed us to bathe in once a month. That water was so filthy, I preferred not to bathe at all.²⁴²

Boys consistently complained that there was not enough food, and that older boys or adults would sometimes snatch away what little food they were given. Even where children are separated from adults, they might still overlap during meals. "For lunch, the B and C blocks were mixed together, so we were mixed with adults then. Some of the men would steal some kids's food," said William, who was in Industrial Area for four weeks on vagrancy charges.²⁴³ According to the children, meals consist of a thin porridge in the early morning, followed by a small portion of ugali and beans for lunch at around 10:30 a.m., and an early supper at around 3:00 p.m. From 3:00 p.m. until the next morning children were given nothing more to eat and complained about hunger especially during this period.

In addition to grossly inadequate physical conditions, boys complained of physical and sexual abuse and harassment by other inmates. For example, boys who had been remanded in Industrial Area said that older boys, who had been there for long periods of time, played a supervisory and authoritarian role over the other children, who live at the whim and mercy of these internal rulers of the remand cells. Robert, who had been confined in Industrial Area Remand, described the abusive treatment that children suffer at the hands of other inmates:

There were two older boys in the room who supervised everyone. They might beat you up, or sell your clothes to buy cigarettes, or take your food. One of them tried to seduce me, but I refused, so I was beaten up and had my clothes taken away from me. They smeared excrement from the toilet all over my body. I tried to complain to the prison guards about it, but they wouldn't listen. I had to stay in my underwear until a friend of mine came to visit me and brought me some clothes. The next time I went to court, I pled guilty, because I didn't want to have to go back there.²⁴⁴

Children repeatedly said that guards were indifferent to their needs and complaints -- that prison guards did not respond to requests for water, complaints of illness, or complaints about abuse from other inmates. One boy said that prison guards were even "paid off" by the older boys who were the "leaders."²⁴⁵

Not only do the guards do nothing to assist the children, but in Shimolatewa, Kodiaga and Industrial Area, children complained of physical abuse by guards themselves. "I got along fine with the other boys and the men, but the guards beat us all the time. Sometimes they'd use a *rungu* [baton], and they'd hit us aiming for the joints. I still feel the pain in my knees from the *rungu*," said sixteen-year-old James, who was detained in Shimolatewa remand prison in April 1996.²⁴⁶ Boys in Industrial Area said they had been beaten by guards with whips, and also with batons aimed at their joints.²⁴⁷ One boy who had been remanded in Kodiaga for six weeks described being beaten indiscriminately by prison guards: "seven guards came bursting into the room and were beating us all for no reason. Then they ordered us all to strip and to go outside to the courtyard, where they made us jump up and down for half an hour. Some of the people were sick and weak, and couldn't jump, so the guards beat them and kicked them."²⁴⁸

The two girls we interviewed (aged twelve and fourteen), who had been remanded in 1995 to Langata Remand Prison, said they were not mistreated by guards or inmates there. Unlike the remand prisons for men, the girls were given mattresses and blankets. The twelve-year-old said she and other young girls were kept separately from the adult women. The fourteen-year-old said she was held with adults.²⁴⁹

Finally, as in juvenile remand facilities, adult remand prisons offer no activities for the children whatsoever. Children consistently said they were shut in their rooms or cells all day, except for meal times and a brief period outside in the morning. Several children remarked in separate interviews that the only pastime in remand prisons is "killing the lice."

Approved Schools

After spending periods of varying length on remand, children may be committed by courts to approved schools, established under Article 37 of the Children and Young Persons Act. Like juvenile remand homes, approved schools are under the administration of the Children's Department and are subject to the same internal regulations. We found that conditions in approved schools were generally better than in the remand centers. Most importantly, children receive education and/or vocational training up to a certain level in approved schools, although the quality of that education has been criticized by NGOs. A principal criticism of approved schools is that children from many different backgrounds, and sent to the schools for diverse reasons, are mixed together; serious offenders may negatively influence other children who are there simply because they are homeless, abandoned, or orphaned. Although approved schools are supposedly aimed at educating and rehabilitating children for return to society, "the approved school's reputation for being little more than a prison means it is difficult for the inmates to find employment [and acceptance] when they are released."²⁵⁰

Mixing of Children

There are eleven approved schools in Kenya: one for the reception and distribution of children to other approved schools, four for children in need of "protection and care", and six for children in need of "protection and discipline."²⁵¹ According to the Children's Department, "[t]he P&C category handles and rehabilitates [children] who

are non-offenders but lack responsible parenthood, homeless, and destitutes who require care, support, and protection. The other category (P&D) caters for Juvenile Delinquents and those beyond parental control."²⁵² The director of the Children's Department acknowledged that "the demarcation between P&C and P&D cases is very thin." As discussed earlier, the distinction between P&C and P&D cases is in many ways arbitrary. Further, approved schools designated for P&D children also receive children convicted of criminal offenses.

In practice children are often mixed together from all categories, P&C, P&D, and criminal offenders. A representative from an NGO that runs a street children's program in Nairobi said:

The system of approved schools serves so many different purposes under one roof that it ends up being detrimental to all children. Lost children are mixed with criminal kids. Plus there are inadequate resources -- no activities for the children, poor quality in education, unmotivated staff and teachers, and the punitive measures are too harsh, as if all the children are small criminals."²⁵³

Most children in approved schools are street children.²⁵⁴

According to the Children's Department, approved schools are also designated for children by age group: junior, medium, and senior.²⁵⁵ However, in each of the three senior approved schools we visited (Kakamega, Likoni and Kirigiti), we found children of all ages.⁰ Further, although the Children and Young Persons Act requires that children must be at least ten years old to be committed to an approved school unless the child "cannot be suitably dealt with otherwise,"¹ we found children as young as seven years old in one of the approved schools we visited (Kirigiti).

Physical Conditions

Overcrowding does not appear to be a problem, with the notable exception of Kirigiti (the only approved school for girls). In Kirigiti, there were 188 girls there on the day of our visit. According to the deputy manager of the school, the capacity of the school is 160.² Girls in Kirigiti are separated into different dormitories according to age, but in Likoni and Kakamega boys of all ages are mixed together in the dorms. According to the Children's Department, approved schools are operating under capacity, with 3,285 children registered in schools that reportedly have a combined capacity for holding 6,000 children.³

The physical surroundings in the schools were spartan, and parts of buildings were in disrepair. In Kirigiti, the dorms were spare, with metal frame bunk beds with mattresses covered by one blanket. Walls were chipped, peeling, and graffiti-scratched. Metal lockers in the dorms were batte